TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 242

JESSE H. DENTON, PETITIONER,

vs.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, THE ILLINOIS CENTRAL RAILROAD COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

PETITION FOR CERTIORARI FILED JULY 18, 1931

CERTIORARI GRANTED OCTOBER 19, 1931

(36,056)

( )

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[fol. 3]

IN CIRCUIT COURT OF LAUDERDALE COUNTY

JESSIE H. DENTON, Plaintiff,

vs.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, ILLINOIS Central Railroad Company, Inc., and Jim Hunter, Defendants

DECLARATION—Filed Oct. 22, 1929

Now comes the plaintiff, Jesse H. Denton, a resident citizen of Lauderdale county, Mississippi, by his attorney, J. V. Gipson, and brings this, his cause of action against the defendants, the Yazoo & Mississippi Valley Railroad Company, a corporation, Illinois Central Railroad Company, a corporation, and Jim Hunter, and for cause of complaint would show unto the court the following facts to wit:

The defendant, Yazoo & Mississippi Valley Railroad Company, is now, and at all other times mentioned herein, [fol. 4] a railroad corporation owning and operating lines of railroad composed of steel rails on which cars, engines and trains run, both passenger and freight trains, running from several states of the Union into the State of Mississippi and through many cities and counties in Mississippi, among other counties of Mississippi through which the said Railroad company runs its lines and has its agents and officers are Hinds county and Lauderdale county, Mississippi, and among other cities through which said railroad runs is Jackson and Meridian, Mississippi; that the said defendant corporation is a domestic corporation, being organized under the laws of the State of Mississippi.

The defendant, Illinois Central Railroad Company, Inc., is a railroad corporation, owning and operating lines of Railroad composed of steel rails, on which engines cars and trains run—both passenger and freight trains; running from several states of the Union into the State of Mississippi, and through many cities and counties in Mississippi. Among other counties of Mississippi through

which the said railroad runs its lines, and has its offices, which the said railroad runs its lines, is Jackson, Mississippi; the said railroad being a foreign corporation, but being authorized to do business in the State of Mississippi, and it employs and maintains servants commonly called porters at the depot in Jackson, Mississippi, who are employed and paid to handle, load and unload mail and baggage for its trains, and the trains of the other defendant railroad, the Yazoo & Mississippi Valley Railroad Company, Inc., and the defendant, Jim Hunter, is one of said porters, so employed and paid. The defendant, Jim Hunter, is a resident Citizen of Hinds county, Mississippi, and a servant of the defendant railroad companies as aforesaid, and the relationship of Master and servant existed between the defendants, Yazoo & Mississippi Valley Railroad Company, Inc., and the Illinois Central Railroad Company, Inc., at this time and all other times mentioned herein.

[fol. 5] The plaintiff, Jessie H. Denton, is and was at all times mentioned herein, a United States Railway Postal Clerk, on the trains of the Yazoo & Mississippi Valley Railroad Company; that said passenger trains carry the United States mail in a car being a part of said trains, and said car being a United States Railway Postoffice, in which United States Railway Postal clerks are employed to handle, distribute, and dispatch the mails into and from said post offices; said trains stop at Jackson a depot in Jackson, Hinds county, Mississippi, for the purpose of loading, unloading and exchanging the United States mail from and to said post offices on said passenger trains, and for other purposes. The defendant, Illinois Central Railroad Company, through some arrangement, the details of which are unknown to your plaintiff, with the defendant, Yazoo & Mississippi Valley Railroad Company, furnished their servant, the other defendant, Jim Hunter to act as mail porter to load and unload mail to and from the door of the car in the passenger trains composing the Railway Postoffice, on the defendant, Yazoo & Mississippi Valley Railroad Company's trains; that the said post offices on said trains consist of about one half of a sixty foot car with a door about three feet wide on the side of the car near the end of the car, through which the outgoing and incoming mails are loaded and unloaded at the various depots, and

that it is necessary for the said postal clerks on duty when performing their duties, to be in the aisle of said car opposite said door, while loading and unloading mail.

That the plaintiff's duty as United States Railway Postal Clerk, while on duty in said post office and on said passenger train when said train stopped at the depot in Jackson, Hinds county, Mississippi, was to place the pouches and sacks of mail in the doorway of said post office in order that the defendant, Jim Hunter, could reach and remove same to a truck on the platform or run-way of said depot to be transferred to various trains and postoffices. On or about the 21st day of April, 1927, when where the plain-
[fol. 6] tiff was performing his aforesaid duties, it was then and there the duty of the defendant, Jim Hunter, while performing his duties incident to his employment, to take and remove the pouches and sacks of mail from the door of said car, or post office, and to place same on the truck on the platform, or runway, at said depot, and when loading mail from the truck on the platform, or runway, at said depot, on to and in to the car door, or doorway of said post office, to remove the pouches and sacks of said mail from said truck and place them in the door of said car or postoffice in order that said mail could be within reach of the plaintiff on duty or employed in said post office; that the duties of the plaintiff, Jesse H. Denton, when receiving said mail, as aforesaid, was to read *and* label on each pouch, or sack of mail, so as to ascertain its routing to its marked destination and to place it in the proper part of the car, or said post office, as laid out for mail being dispatched to that part of the country; that said labels on said pouches and sacks of mail are about three inches long and five-eighths of an inch wide, on which the destination of the pouches and sacks of mail is printed or written, and the small size of the label made it necessary for the plaintiff to closely inspect same when receiving said mail in said door of the car, or said postoffice, prior to his placing or dispatching of same as aforesaid.

Plaintiff would further show unto the court that on said date and occasion that the waters of the Mississippi River were very high and that some of the levees had been broken, or destroyed, and much territory overflowed; that all crossings at which the United States mail crossed said river

south of St. Louis, Missouri, was out of commission, or operation, during the said flood stage, except at Vicksburg, Mississippi, where the Yazoo & Mississippi Valley Railroad Company's, one of the defendants, trains crossed said river, and the crossing at New Orleans, Louisiana, [fol. 7] that by reason of so many trains that carry mail on the various railroads that ordinarily cross said river at the various crossings, being unable to cross said river during the high water, caused an unusually large amount of mail to be rerouted and dispatched so as to be handled on the train when and where plaintiff was employed in said car, or postoffice, in order to transport said extra amount of accumulated mail across said river to the west side of said river for distribution over various routes.

On said date and occasion the defendant, Jim Hunter, while performing his duties incidental to his employment by his master, the defendant railroad companies, was then and there loading the said increased accumulation of mail from the truck on the platform or run-way, into the said car or postoffice, and that the plaintiff was unable to remove from the door, read the labels and dispatch, or place the pouches and sacks of mail at proper places in the car, as fast as it was possible for the defendant, Jim Hunter, to place said mail in the door of said car or postoffice, and that by reason of that fact, and when and where the servants and agents of the defendant companies were urging the said Jim Hunter to jurry the loading of the accumulated mail to decrease and reduce the delay of the train as much as possible; under these conditions the said Jim Hunter stacked or piled up, mail pouches and sacks in the door of said car and Railway postoffice to a height of about two feet, when and where the said Jim Hunter then and there carelessly, and grossly negligently swung, pitched or threw a large sack of mail over the said pile of mail in the door of said postoffice, into the aisle of said car, without regard for the safety of the plaintiff, Jesse H. Denton, where it was then and there the duty of the said plaintiff to perform his aforesaid duties, and said sack of mail then and there struck said plaintiff on his left leg.

The plaintiff's left leg was bruised at and below the knee, which caused much pain and an enlargement below [fol. 8] his said left knee; that the bones, muscles and sinews of his said leg and knee were injured and made sore

and caused him to suffer great pain and mental anguish; that said injury caused an extensive ulcerated area two inches below the knee extending down through the periosteum or tibia; after said injury was treated by doctors, the injured place was lanced twice and grew worse and was then operated on when the plaintiff was placed under the influence of ether in Rush's Infirmary, and the bruised, damaged, injured bone was cut, chiseled and removed, and the bone of the leg curetted. After the operation the bone, commonly called the knee cap, was about one inch too high and was and is out of place. After much pain, suffering and mental anguish, it gradually grew worse and the plaintiff was carried to the Illinois Central Hospital at New Orleans, Louisiana, for treatment.

Plaintiff would further show unto the Court that while he was trying to effect a cure for the aforesaid injury, that he remained in Rush's Infirmary in Meridian, Mississippi, for four weeks, and that he remained for seven weeks in the Illinois Central Hospital at New Orleans, Louisiana, under the care and treatment of physicians and surgeons.

Plaintiff would further show unto the court that as a direct and proximate cause of the aforesaid injuries to his leg, there was formed two abscesses on left side near plaintiff's hip, and one large abscess on plaintiff's upper right breast, near plaintiff's collar bone. In trying to affect a cure, it was necessary for each of said three large abscesses to be cut or lanced, and that each of said abscesses remained running, or discharging sores, for about four months. It became necessary to open, bathe, dress and treat all of said abscesses from time to time, all of which caused plaintiff to suffer much pain and mental anguish.

[fol. 9] Plaintiff would further show that he submitted to various painful treatments and underwent several operations, trying to effect a cure for his said injuries, and that he suffered such mental anguish and excruciating pain during this period of time, which consisted of a long period of time.

Plaintiff would further show unto the Court that prior to his injury as aforesaid, that he was an ablebodied man and was able to perform his duties as a United States Railway Postal Clerk, and that he had been a U. S. Railway Postal Clerk since 1917, and that he was earning $2,450.00 per year at the time of said injury; that since his injury as

aforesaid, he has been physically unable to return to his job or to perform his duties as a United States Railway Postal Clerk; that since the injury as aforesaid, the plaintiff has, up to the time of filing this suit, lost $6128.00 as salary, and will continue to lose salary that he would have earned from the United States Government while employed and performing his duties as aforesaid, if he had not been prevented from so doing by the injury as aforesaid.

Plaintiff would further show unto the court that in addition to the aforesaid money lost by plaintiff, he was forced to remain away from his family and to pay traveling expenses for himself and his wife, and for medicine, supplies, doctor bills and expenses incidental to his treatment for the aforesaid injury.

Plaintiff would further show unto the Court that as the approximate result of the negligence of the defendants, as heretofore complained of, plaintiff's earning capacity has been materially and greatly reduced, if not completely destroyed, and that he will be a cripple always, the use of his left knee and leg being permanently injured.

Because of all the wrongs and injuries herein complained of, and the expenses incurred by plaintiff, and the pain and mental anguish, suffering and permanent personal injury, the plaintiff, Jesse H. Denton, has been damaged in the [fol. 10] sum of Thirty-five Thousand dollars ($35,000.00). Therefore he brings suit and demands judgment jointly and severally against the defendants, Yazoo & Mississippi Valley Railroad Company, Inc., Illinois Central Railroad Company, Inc., and Jim Hunter in said sum, together with all Court Costs.

J. V. Gipson, Attorney for Plaintiff.

IN CIRCUIT COURT OF LAUDERDALE COUNTY

SUMMONS TO Y. & M. V. R. R. COMPANY

The State of Mississippi, Lauderdale County, to the sheriff of Lauderdale County, Greeting:

We command you to summon Yazoo & Mississippi Valley Railroad Company and Jim Hunter, if to be found in your county, to be and personally appear before the Circuit

Court of Lauderdale county, to be held in and for said county at the court house thereof in the City of Meridian, Mississippi, on the second Monday in December, 1929, then and there to make answer unto Jesse H. Denton, of a complaint trespass on the case damages of plaintiff $35,000 and costs.

Herein fail not and have then and there this writ:

Given under my hand, and seal of said Court affixed, and issued the 22nd day of October, 1929.

M. L. Rush, Clerk Circuit Court

[fol. 11] I have this day executed the within writ personally by delivering to J. P. Crutcher, Agent for Yazoo & Mississippi Valley Railroad Company, defendant, a true copy of this writ.

This the 29th day of October, 1929.

M. J. Stone, Sheriff. J. H. Wells, Deputy Sheriff.

IN CIRCUIT COURT OF LAUDERDALE COUNTY

SUMMONS TO ILLINOIS CENTRAL RAILROAD COMPANY AND JIM HUNTER

The State of Mississippi, Lauderdale County, to the sheriff of Hinds County, Greeting:

We command you to summon Yazoo & Mississippi Valley Railroad Company, Inc., Illinois Central Railroad Company, Inc., and Jim Hunter, if to be found in your county, to be and personally appear before the Circuit Court of Lauderdale county, to be held in and for said county at the Court House thereof in the City of Meridian, Mississippi, on the second Monday in December, 1929, then and there to make answer unto Jesse H. Denton of a complaint Trespass on the case, damages to Plaintiff $35,000.00 and costs.

Herein fail not, and have then and there this writ.

Given under my hand, and seal of said Court affixed, and issued the 22nd day of October, 1929.

M. L. Rush, Clerk Circuit Court.

Executed personally on the Yazoo & Mississippi Valley Railroad Company and Illinois Central Railroad Company

by delivering a true copy of the within writ to J. L. Morgan, its agent, this 26th day of October, 1929.

[fol. 12] Tom Moore, Sheriff, by W. A. Sandell, Deputy Sheriff.

I have this day executed the within writ personally, by delivering to within named defendant, Jim Hunter, a true copy of this writ.

This the 26th day of October A. D. 1929.

Tom Moore, Sheriff, by W. A. Sandell, Deputy Sheriff.

IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

APPLICATION OF JIM HUNTER FOR CHANGE — VENUE—Filed Dec. 9, 1929

Comes the Defendant, Jim Hunter, and respectfully represents unto the Court the following facts, to wit:

1. That this is a civil action of which the circuit court has original jurisdiction and that it is an action not local, and that he is a citizen resident of this state, and that he is sued in said action out of the county of his household and residence, and that he is a citizen resident in the State of Mississippi, and that Hinds county, Mississippi, is the county of his household and residence.

2. He further represents that the defendant, Yazoo & Mississippi Valley Railroad Company, joined as co-defendant in said action, is a domestic corporation, being a cor- [fol. 13] poration under the laws of the State of Mississippi, and that its domicile is in Jackson, Hinds county, Mississippi, and that the cause of action occurred or accrued in Hinds county, Mississippi, and that this is not an action of ejectment nor an action of trespass on land, nor for the statutory penalty for cutting trees and firing wood, nor an action for the actual value of trees cut, but is an action for personal injuries alleged to have been sustained by the plaintiff in Hinds County, Mississippi, and that the declaration states no cause of action against the said Y. & M. V. R. R. Co.

3. But the defendant, Illinois Central Railroad Company, is a foreign corporation, doing business in the State of Mississippi, not *not* doing business in Lauderdale county, Mississippi, and having no officer or agent in Lauderdale county Mississippi on whom process may be served, and that the said Illinois Central Railroad Company, joined as a co-defendant herein, with this defendant, was not served with process within Lauderdale county, Mississippi.

He further represents that the said defendant, Illinois Central Railroad Company, has no line of railroad within Lauderdale County, Mississippi, and is not doing business in said county.

He further represents that the cause of action sued on is alleged to have occurred or accrued in Hinds county, Mississippi, where the said Illinois Central Railroad Company has offices and agents and where it was served with process in this case.

Wherefore the said defendant, Jim Hunter, being a citizen resident in this state, moves the Court that the venue of this suit shall be changed on this, his application, and before the jury is empaneled, to the county of his household and residence, to wit: Hinds county, Mississippi.

Jim Hunter, Defendant, by Bozeman & Cameron, Attorneys.

[File endorsement omitted.]

[fol. 14] IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

APPLICATION AND MOTION OF YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY FOR A CHANGE OF VENUE.—Filed Dec. 9, 1929

Comes the defendant, Yazoo & Mississippi Valley Railroad Company, and shows unto the court that it is a defendant in the above styled cause, and that it is a domestic corporation domiciled at the City of Jackson, Hinds county, Mississippi, and that the cause of action, as appears from the declaration, occurred or accrued in Hinds county, Mis-

sissippi, and further shows that this cause is not an action for ejectment, or trespass on land, or for the statutory penalty for cutting and boxing trees, and firing wood, or for the actual value of trees cut.

Wherefore the said defendant moves the court to change the venue of this action from the Circuit Court of Lauderdale County, Mississippi, to the circuit court of Hinds county, Mississippi, where it has its domicile and where the cause of action occurred or accrued.

Bozeman & Cameron, Attorneys for Defendant Y. & M. V. R. R. Co.

[File endorsement omitted.]

[fol. 15] IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

ORDER OVERRULING MOTIONS FOR CHANGE OF VENUE

This cause coming on to be heard upon the application of the defendant, Jim Hunter, to change the venue of this suit to Hinds County, and upon the like application of the defendant, Yazoo & Mississippi Valley Railroad Company, come the parties, and the court having heard the said motions and the argument of counsel, and being of the opinion that said motions should be overruled, it is thereupon considered that the said motions, and each of them, be and they are denied and overruled; to which action of the court the defendants, Jim Hunter and the Yazoo & Mississippi Valley Railroad Company, and each of them except.

IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

PLEA OF DEFENDANTS, YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY AND JIM HUNTER—Filed April 5, 1930

And the defendants, Yazoo & Mississippi Valley Railroad Company, and Jim Hunter, by attorneys, come and defend

the wrong and injury, when, etc., and says that they are [fol. 16] not guilty of the said supposed grievances laid to their charge or any or either of them or any part thereof, in manner and form as the plaintiff hath complained against them. And of this they put themselves upon the country.

Bozeman & Cameron, Attorneys for said Defendants.

[File endorsement omitted.]

In Circuit Court of Lauderdale County

[Title omitted]

Plea of Defendant Illinois Central Railroad Co.—Filed June 9, 1930

And the defendant, Illinois Central Railroad Company, reserving the benefit of its plea to the jurisdiction, by attorney, comes and defends the wrong and injury, when, etc., and says that it is not guilty of the said supposed grievances above laid to its charge, or any or either of them or any part thereof, in manner and form as the plaintiff hath above complained against it. And of this it puts itself upon the country.

Bozeman & Cameron, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 17] In Circuit Court of Lauderdale County

[Title omitted]

Notices Under General Issue—Filed June 9, 1930

First Notice Under the General Issue No Jurisdiction

And the plaintiff will take notice that the defendants now contend, and will prove and contend on the trial of this case, under the general issue, that this is a case arising under the postal laws of the United States, and that the exclusive jurisdiction thereof lies in the District Court of the

United States for the proper district, and that the circuit court of Lauderdale county has no jurisdiction thereof.

Bozeman & Cameron, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 18] [Title omitted]

SECOND NOTICE UNDER GENERAL ISSUE OF NO JURISDICTION

And the plaintiff will take notice that the defendants, Illinois Central Railroad Company, contends and protests that this court has no jurisdiction over this defendant in this case and that all pleas filed herein by this defendant, the Illinois Central Railroad Company, are filed subject to the above contention with the reservation of all rights of this defendant to further insist and contend that this court is without jurisdiction as to it.

Bozeman & Cameron, Attorneys.

[File endorsement omitted.]

[fol. 19] [Title omitted]

THIRD NOTICE UNDER THE GENERAL ISSUE

Plaintiff will take notice that the defendants still protesting that this court is without jurisdiction, will offer in evidence and prove, in bar of said action, under the General issue, that at the time and place of plaintiff's alleged injury the plaintiff and the defendant, Jim Hunter, were engaged in the joint enterprise ~~of~~ loading mail into a mail car, and that under the rules and regulations governing the same, prescribed by the United States Government, the plaintiff, being the clerk in charge of the mail car, was under the duty and obligation to supervise and direct and control the said Jim Hunter in the work that he was doing in loading the said mail; that the plaintiff was an experienced railway mail clerk, experienced in the loading of mails into railway post-office cars, and familiar with the manner in which such loading was usually done; that at the time and place of plaintiff's injury the said Jim Hunter was loading the said mail into the said mail car, under the direction and control of

plaintiff and in the usual manner; that is to say, piling the sacks of mail in the doorway of said car while the plaintiff was taking the said sacks from the said pile and placing them in the car, and that being engaged in such joint enterprise, the plaintiff assumed the risk of being injured by one of the sacks of mail falling on or against his foot or leg, and, therefore, defendants are not liable for the plaintiff's injury.

[fol. 20] And the defendants will further offer in evidence and prove under the general issue, in bar of said action, that in receiving and helping to load the said mail into the said mail car the plaintiff was under the duty and obligation to exercise reasonable care for his own safety, and not to be struck or injured by any of the sacks of mail that were being piled in the doorway of the said car by the said Jim Hunter, yet the plaintiff wholly failed to exercise reasonable care for his own safety in that regard, and such negligence of the plaintiff not only contributed to but was the sole proximate cause of his alleged injury, and this the defendant is ready to verify.

Bozeman & Cameron, Attorneys for Defendants.

[File endorsement omitted.]

[Title omitted]

FOURTH NOTICE UNDER GENERAL ISSUE

And the plaintiff will take notice that the defendants, reserving the benefit of their pleas to the jurisdiction, will further offer in evidence and prove under the general issue, in bar of said action, and also in mitigation of damages, that at the time of the plaintiff's alleged injury the plaintiff [fol. 21] was an employee of the United States, being a railway mail agent, and that the alleged personal injuries of the plaintiff were sustained while he was in the performance of his duties as such, and by reason thereof the plaintiff was and is entitled to the benefits of the Act of Congress approved September 7, 1916, being Chapter 458, 39 Sta., being an Act providing compensation for injuries to employees of the United States and that, in pursuance of the provisions of the said Act the plaintiff, after sustaining the said alleged injuries, made written claim to the

United States Employees' Compensation Commission for compensation for said injuries under the said Act; and that the plaintiff was allowed compensation under said Act by said Compensation Commission and has received and accepted such compensation monthly and continually since the said alleged injuries, and is still receiving and accepting from the United States Government such compensation and the benefits of said Act of Congress; and the plaintiff is entitled under the said Act of Congress to receive, and will continue to receive such monthly compensation for his said injuries and so long as he shall be disabled thereby.

And by reason thereof, under the provisions of said Act, any right of action against these defendants, or either of them, for said alleged injuries of the plaintiff is vested in the United States, and not for the plaintiff.

And the plaintiff has not been and is not now authorized by the said United States or the said United States Employees Compensation Commission to prosecute this action for the use and benefit of the United States.

And this the defendants are ready to verify.

Bozeman & Cameron, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 22] [Title omitted]

FIFTH NOTICE UNDER THE GENERAL ISSUE

And the plaintiff will take notice that the defendants, Yazoo & Mississippi Valley R. R. Company and Illinois Central R. R. Company, still protesting that this court is without jurisdiction, will offer in evidence and prove under the general issue, in bar of said action, that it was expressly provided in the regulations prescribed by the Government of the United States, through its Postmaster Genreal, governing the transportation of mails by railroads, that "Railroad Companies must furnish the men necessary to handle the mails, to load the same into, and receive them from, the doors of railway postoffice cars, and to load and pile the mails in, and unload them from storage and baggage cars under the direction of the transfer clerk, or clerk in charge of the car, if one is on duty."

And further, that at the time and place of the plaintiff's alleged injury, there was present and on duty a transfer clerk, and also a clerk in charge of the car in which the plaintiff is alleged to have been injured, neither of whom was an employee of either of these defendants, and both being employees of the United States Government.

That in loading and piling the mail into said car the said Jim Hunter was not in any way under the direction or control of these defendants, or either of them, but was, on the [fol. 23] contrary under the direction and control of the said transfer clerk and of the said clerk in charge of the car, to wit, the plaintiff herein.

That the said transfer clerk and the said clerk in charge of the car had the right and authority, and it was their duty, to direct the said Jim Hunter as to the manner in which he should load and pile the said mails into said car, and to control the said Jim Hunter therein, and neither of these defendants was under any duty or obligation to control or direct the said Jim Hunter in loading and piling and handling of said mails, nor was either of these defendants in any way responsible or liable for any improper or negligent handling or loading of said mail by the said Jim Hunter.

And this the defendants are ready to verify.

Bozeman & Cameron, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 24] In Circuit Court of Lauderdale County

Motions to Strike Notices under General Issue—Filed June 14, 1930

[Title omitted]

Motion to Strike First Notice under the General Issue

Now comes the plaintiff, Jesse H. Denton, and moves the Court to strike the first notice under the general issue, and for grounds of said motion would show unto the court that evidence that might be offered under said notice would be incompetent, irrelevant under the declaration here sued on. This this Court has passed on jurisdiction herein.

J. V. Gipson, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 25] [Title omitted]

MOTION TO STRIKE SECOND NOTICE UNDER THE GENERAL ISSUE

Now comes the plaintiff, Jesse H. Denton, and moves the Court to strike the second notice under the general issue for the following grounds, to wit:

1st. That the Illinois Central Railroad Company is sued jointly with the Yazoo & Mississippi Valley Railroad Company, a corporation, who has an agent and place of business in Lauderdale County, Mississippi, on which process could be and was served in this case as shown by the sheriff's return.

2nd. That the other two defendants herein, the Yazoo & Mississippi Valley Railroad Company and Jim Hunter filed plea to the jurisdiction of this court to remove, and same was heard and considered by this court, and same was overruled. Therefore the said special plea will not lie.

J. V. Gipson, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 26] [Title omitted]

MOTION TO STRIKE THIRD NOTICE UNDER THE GENERAL ISSUE

Now comes the plaintiff, Jesse H. Denton, and moves the Court to strike the third notice under the general issue, and would show for grounds of said motion, the following grounds, to-wit:

1. That the plaintiff was not the clerk in charge of the Railway Postoffice at the time of the alleged injury herein complained of.

2. That the loading of mail into the mail car was not a joint undertaking between the defendant, Jim Hunter, and the plaintiff.

3. That the mail car here in question was not a storage mail car, but was a United States Railway Postoffice.

4. That plaintiff was not under the duty or obligation to superintend, direct and control the defendant, Jim Hunter.

5. That the question of whether or not Jim Hunter was loading or unloading mail into said mail car at the time said

alleged injury was caused in the usual manner and under the direction of the plaintiff is question of fact that can be proven if it be a fact under the plea of the general issue.

6. That the plaintiff, as a matter of law, did not assume the risk of being injured by the defendant, Jim Hunter, on the occasion complained of in the declaration.

7. That the plaintiff, Jesse H. Denton, as a matter of [fol. 27] law, was a passenger on the train, and that the defendant, Jim Hunter, was a servant of the defendant railroad companies, and that the risk of being injured by the defendant, Jim Hunter, or either defendant, was not assumed under the law by the plaintiff.

J. V. Gipson, Attorney for Plaintiff.

[File endorsement omitted.]

[Title omitted]

MOTION TO STRIKE FOURTH NOTICE UNDER THE GENERAL ISSUE

Now comes the plaintiff, Jesse H. Denton, and moves the Court to strike the fourth notice under the general issue for the following grounds, to wit:

1. That under the law, the defendants, or either of them are not entitled to the benefits of the Acts of Congress providing for the compensation of the United States Employees.

2. That if the plaintiff recovers he must return the amount of compensation received from the United States Compensation Commission, out of his recovery herein, if any, and [fol. 28] that the relationship between said Commission and the plaintiff does not concern the defendants as a matter of law in any way.

3. It is not proper and competent to read said notices before the jury and offer in evidence anything to show that the plaintiff is receiving compensation from said Commission, as same is incompetent and prejudicial to the rights of the plaintiff.

4. The defendants are not entitled to any benefits of any amount paid as compensation to the plaintiff.

5. That said Acts of Congress were not passed for the benefit and protection of parties who may injure United States employees, but for the sole and only purpose of protecting and for the benefit of United States Employees.

6. That the right of action against the defendants and each of them for the alleged injury to the plaintiff is not vested in the United States for the use and benefit of United States as alleged in said notice, and in support of this contention, plaintiff files herewith as "Exhibit A" of this motion, copy of letter from said Commission showing the plaintiff's authority to bring suit in his own name.

7. That the plaintiff has a legal right to bring this cause of action.

J. V. Gipson, Attorney for Plaintiff.

EXHIBIT "A" TO MOTION TO STRIKE FOURTH NOTICE

United States Compensation Commission, Fourth Floor, Investment Building, 15th and K Streets, N. W., Washington

In reply refer to File No. 212,486.

[fol. 29] December 23, 1929.

Mr. Jesse H. Denton, Box 51, Meridian, Mississippi.

DEAR SIR: Under the provisions of Section 26 of the Compensation Law, the Commission requires that you proceed as an individual in your own name to prosecute an action for damages against the Y. & M. V. R. R. Co. Inc., Ills. Cent. R. R. Co., and Jim Hunter, and any other railroad company which you may ascertain to be involved, to recover damages for injuries sustained by you on April 21, 1927, when a railroad porter threw a sack of heavy bundled newspapers into the mail car, causing injuries resulting in disability to your left leg.

You will not be required to assign any action you may have arising from your injuries of April 21, 1927, to this Commission as under our policy assignments are not taken, and in lieu thereof, our beneficiaries are required to institute actions as individuals.

Yours very truly, S. D. Slentz, Attorney.

[File endorsement omitted.]

[fol. 30] IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

ORDER OVERRULING MOTIONS TO STRIKE

This cause coming on this day for hearing on motion of the plaintiff, Jesse H. Denton, to strike the first, second and third notices under the General Issue filed by the Defendant, and after same is heard and considered by the Court, it is the order of the Court that said motions to strike said several notices be and they are hereby overruled, to which the plaintiff excepts.

Ordered adjudged this June 16, 1930.

IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

ORDER SUSTAINING MOTION TO STRIKE FOURTH NOTICE UNDER GENERAL ISSUE

This cause coming on for hearing on motion of the plaintiff, Jesse H. Denton, to strike the fourth notice under the general issue filed by the defendants, and after the same is heard and considered it is the order of the court that said motion be and the same is hereby sustained, and said notice is hereby struck, to which defendants except.

Ordered and adjudged this 16th day of June 1930.

[fol. 31] IN CIRCUIT COURT OF LAUDERDALE COUNTY

No. 2279

JESSE H. DENTON

vs.

YAZOO & MISSISSIPPI VALLEY R. R. COMPANY, ILLINOIS CENTRAL R. R. COMPANY, and JIM HUNTER

Statement of Evidence

Appearances:

For the plaintiff: J. V. Gipson.
For the defendant: Bozeman & Cameron.

Be it remembered that on, to wit, the 16th day of June, 1930, the same being one of the days of the regular June term of said court for the year aforesaid, this cause coming on for trial before the Honorable J. D. Fatherree, Judge of said court and a jury empaneled herein, the following proceedings were had, to wit:

The plaintiff, to maintain the issues on his part, then and there offered and introduced the following testimony, to wit:

[fol. 32] C. W. VANBUREN, called as a witness on behalf of the plaintiff, was sworn, and testified as follows:

Direct examination.

By Mr. Gipson:

Q. State your name, please?
A. C. W. Van Buren.
Q. Who do you work for, please sir?
A. I am employed by the Illinois Central Railroad now.
Q. Where?
A. Jackson, Mississippi.
Q. At the depot in Jackson?
A. Yes, sir.
Q. What do you call your position?
A. Station Master.
Q. As such what are your duties?
A. Well, sir; I have charge of all the trains that run in there, in and out from the sheds; all of the loading of mail and express, passengers and baggage.
Q. On the 21st day of April, 1927, the date that this injury is alleged to have occurred, did you have that position at that time?
A. Yes, sir.
Q. Do you know Jim Hunter?
A. Yes, sir; I employed him.
Q. On April 21, 1927, when was he then working?
A. Illinois Central Railroad Company.
Q. Do you know who hired him?
A. Yes, sir.
Q. Who?
A. I did; yes, sir.

Q. Do you know who had the right to fire him?

A. Yes, sir.

[fol. 33] Q. Who did?

A. I did, or any legal officer of the Illinois Central Railroad company.

Q. No one under you at the depot had the right to fire him?

A. I had platform folks that worked around there that worked for me that would come to me and make complaint. The transfer clerk, Mr. Webb, has reported niggers that did not do the work right and I have taken them out of the service.

Q. To report them to you, but no one under you has a right to fire them?

A. I don't know of a man that has been fired that has been employed there as station porter.

Q. Mr. Van Buren, on April 21, 1927, did the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company use one and the same depot in Jackson, Mississippi?

A. Yes, sir.

Q. Who furnished the porters to handle the mail on the Yazoo & Mississippi Valley trains running from Meridian, Mississippi, through Jackson, Mississippi to Vicksburg, Mississippi and Monroe, Louisiana and Shreveport, Louisiana?

A. The Illinois Central Railroad Company.

Q. State whether or not Jim Hunter, one of the defendants, is one of the porters so furnished?

A. He was—he is; yes sir.

Q. Have you referred to the record to see whether or not Jim Hunter was performing that duty on the 21st day of April, 1929?

A. He was; sir.

Q. Is Jim Baker in the court room?

A. There he sits over there.

Q. This is him here?

A. Yes, sir; that is Jim Hunter right there.

Q. You spoke of Mr. Webb just a minute ago—Mr. Steve Webb?

A. Yes sir; transfer clerk.

[fol. 34] Q. He works for the United States Government,

what is called a transfer mail clerk at the depot at Jackson, Mississippi?

A. That is right; yes sir.

Q. And he meets all trains that bring mail in there and exchange registers and things of that kind?

A. Yes, sir; that is while he is on duty.

Q. I am talking about during their hours of work?

A. Yes, sir.

Q. They worked about three different men at that time, the job about eight hours to a man?

A. Yes, sir.

Q. And Mr. Webb, when he meets those trains, it was customary, was it—was it necessary for him to go to the Railway Postoffice where the clerk was? Is that true or not?

A. Yes, sir.

Q. And you have seen Mr. Webb go into those cars from time to time have you?

A. Yes, sir; that is, I have seen him right at the car. Of course I am not posted at his cars all the time, for I have five or six different trains to handle in there all at one time.

Q. It is customary for the transfer clerk on duty, whoever he is, to enter the railway postoffice whenever the train pulls in?

A. Yes, sir; to sign for any valuables that he receives and delivers. I understand that is a fact.

Q. The Yazoo & Mississippi Valley Railroad Company hauls United States mail, which is commonly called Railway Postoffices, on their trains passing through Jackson, Mississippi, don't they?

A. Yes, sir.

Q. And they did so on the 21st day of April, 1927, did they?

A. They did.

Q. Are you familiar with Train No. 203?

A. Yes, sir.

[fol. 35] Q. What time does that train arrive at Jackson, Mississippi?

A. The schedule now is 2:55, and out at 3:10 now.

Q. And on April 21, 1927, that varied only slightly, did it?

A. Yes, sir.

Q. Is that an east or west bound train?

A. West bound.

Q. At that time, on that date and occasion, was a part of that train composed of a railway, a United States Railway post office?

A. Yes, sir.

Q. Carrying United States mail and railway mail clerks?

A. Yes, sir.

Q. And that train then stopped in Jackson,

A. Yes, sir.

Q. And exchanged mail in Jackson?

A. Yes, sir.

Q. And Jim Hunter, one of the defendants, was a mail porter on Duty?

A. One of the porters on duty to help handle mail on that train; yes, sir.

Q. Do you recall at that time that the Mississippi River was overflowed and that a lot of crossings were blocked and an extra lot of mail rerouted and had accumulated to be transferred west over the Yazoo & Mississippi Valley in order to get across the Mississippi River and being routed for distribution?

A. Yes, sir; we had a little overflow of mail at that time. There was a washout and we handled some over that line.

Q. You recall the accumulation, that the mail had accumulated there?

A. Yes, sir; the mail was a little accumulated.

Q. Wasn't that the only point except New Orleans, Louisiana, south of St. Louis, Missouri, where trains were crossing the Mississippi river at all?

A. They crossed at Memphis.

[fol. 36] Q. To refresh your recollection hadn't they stopped at Memphis the evening before?

A. Well, I would not state positive, but it might have been.

Q. You do know that they stopped at about that time?

A. About the time. It may have been after. I thought that it was after it happened, but I am not positive. I know that Memphis was out.

Q. The crossing at Natchez, Mississippi, Helena, Arkansas, Greenville, Mississippi, and all of those crossings were out of commission, you do know that?

A. I can not say positive, I remember that the Railway Mail service notified me that they was at Helena, Arkansas, and Greenville. I don't remember about Natchez being out. Of course, it might have been out. I will not attempt to say whether it was or not.

Q. The trains on the Yazoo & Mississippi Valley Railroad going east and west cross the Mississippi River at Vicksburg were they or not maintaining their schedule on this day and the days immediately prior thereto due to the heavy traffic, express traffic and U. S. Mail detoured and rerouted over that crossing, is that true?

Q. As well as I remember we had a little delay, I think, two or three days, there at Jackson.

Q. That was headed west?

A. Yes, sir.

Q. You recall the time the train arrived at Jackson, do you?

A. Yes, sir.

Q. The train arrived on time at Jackson, Mississippi, and was headed west from Meridian, Mississippi, and they had not yet encountered any extra accumulation of traffic, passengers, mail, express or baggage coming in from the north and south to Jackson, Mississippi?

A. No, sir.

[fol. 37] Q. In order to strike the Yazoo & Mississippi Valley to carry it on across the river?

A. Yes, sir.

Q. Mr. Van Buren, have you a record as to how late that train actually left Jackson, Mississippi that day going west after it ran into this accumulation of mail, passengers, baggabe and express?

A. Well, not right with me. As well as I remember it left about ten minutes late.

Q. It came into Jackson on time. How long was it supposed to stay in Jackson when it came into Jackson on time, on its regular schedule?

A. Ten minutes.

Q. And your recollection is that it left about ten minutes late, and that would make the train stay in Jackson twice as long as its schedule—twice as long as it was scheduled to stay in Jackson, is that true?

A. I can't say positively that that was the correct time, I can give it to you correctly though.

Q. Have you got that information with you here?

A. No sir; I have not, but I can get it.

Q. But you are positive that the train leaving Jackson headed west was late?

A. It might have been five or ten minutes late. Not over five or ten minutes late.

Q. When it was necessary to buy additional space or to rent additional space from the railroad company over and above the usual contract for space in which to carry the United States mail, do you know what, or do you make any record of that?

A. Sometimes they notify me and then at other times they do not notify me. Not until after the trains have departed.

Q. Are you familiar with the trip reports of the United States Postal clerks showing the amount of space authorized and the amount used and the extra amount bought or rented?

[fol. 38] A. On that train, on that date?

Q. For any particular time, trip sheet, trip report?

A. No, sir; I am not.

Q. Do you know whether or not there was any additional space secured on that day?

A. There might have been; I don't know.

Q. To refresh your recollection did they use twice the usual amount of space that they did fill up when they had one of those sixty foot cars they usually did not fill up at all?

A. Well, they have a space behind the mail, regular U. S. post office that they haul parcel mail in, and it could have been loaded in that end of it on that date; yes, sir.

Q. The Mississippi—the Yazoo & Mississippi Valley Railroad Company, one of the defendants, do they operate the trains into Meridian, Mississippi, do they?

A. Yes, sir; they operate them in here.

Q. That is in Lauderdale county, Mississippi?

A. Yes, sir.

Q. Do they have an agent in Meridian, Lauderdale county, Mississippi?

A. Yes, sir.

Q. Do you know who that agent is?

A. No, sir; I do not.

Q. That is all.

Cross-examination.

By Mr. Bozeman:

Q. Mr. Van Buren, in the handling of mail in the mail car, that is done by mail clerks, whom the Government employed, is it?

A. Yes, sir.

Q. Not by railroad men?

A. No, sir.

[fol. 39] Q. The railroad does not furnish the men to ride in the mail cars and handle the mail?

A. No, sir; they do not.

Q. The only thing that the railroad does is to handle,—is to haul the mail, and to haul the car that it is in?

A. That is right.

Q. And the mail cars themselves are under the supervision of the Government just like the local postoffice?

A. Correct.

Q. The men that work in there are Government men, government employees?

A. Yes, sir.

Q. The only difference between the local postoffice, the only material difference between the local post office in the town and the mail car is that the mail car moves from station to station and the post office stays where it is?

A. That is correct; yes sir.

Q. Now, the loading of the mail and the handling of the mail is done under contract and agreement made between the Government of the United States on one side and the railroad on the other, is it?

A. That is right.

Q. And the handling of mail by the railroads in these mail cars is also controlled by rules and regulations and laws made by the Government or the United States Postal authorities?

A. That is correct; yes, sir.

Q. Now, I show you one of the regulations and laws made, postal laws made for the hauling of mails and the loading of mails at stations. It reads this way. "Section 1293, Paragraph 2. Railroad Companies shall employ the men necessary to handle the mails and load them into and receive them from the doors of the railway post office

[fol. 40] cars, and to load and pile the mails in and unload them from storage and baggage cars under the direction of the transfer clerk or clerk in charge of the car if one is on duty?

Now, I will ask you if under that regulation the railroad company furnished Jim Hunter as one of the men to handle this mail?

A. Yes, sir.

Q. State whether or not in pursuance of this regulation Jim Hunter in loading the mail in the car and handling it there, worked under the direction of the transfer clerk or the clerk in charge of the mail car?

A. Well, yes, sir; he was under the transfer clerk and also under the supervision of the clerk that is taking the mail in.

Q. Both of these. Now, the transfer clerk is a railroad employee or a government employee?

A. Government employee.

Q. He is a mail man?

A. One of the men. In other words, we furnish a man down there at the car and he is under the supervision of the man that is handling the mail down there.

Q. In doing the work or loading and unloading the mail?

A. Yes, sir.

Q. As required by the regulations mentioned, and the man doing it in this case you furnished Jim Hunter?

A. Yes, sir.

Q. When he was loading and unloading the mail down there in the car under whose direction and supervision was he?

A. The transfer clerk and the clerk in the mail car in the United States post office.

Q. Did you leave it to them as mail men to control him and direct him how he should load and unload the mail?

A. Yes, sir.

[fol. 41] All the details of that work, the supervision of it, how he did it and what he did, which he loaded first, and how fast he loaded it, did you have any, or did you attempt to exercise any control over that at all?

A. Not a bit in the world. I am busy at other points and I don't stay at one mail car.

Q. You are still station master there are you, Mr. Van Buren?

A. Yes, sir.

Q. And have been for how many years?

A. Twenty-five years, going on twenty-six.

Q. The same job?

A. The same thing.

Q. Who was the transfer clerk or the post office mail transfer clerk, who was in charge there at that time?

A. Mr. Steve Webb.

Q. That is all.

Redirect examination.

By Mr. Gipson:

Q. This regulation here refers to storage and baggage cars. Mr. Denton, here, you never saw this mail clerk here working in a storage or baggage car, did you during the whole time he was running through there for about ten years?

A. Well, I will not say positively, but in that case, as to Mr. Denton, I can't say that I have seen him in the storage end. Of course, I have seen mail coming out of the storage end, the storage cars. I can't say that I have seen Mr. Denton doing that, but I have seen them doing it.

Q. You know the clerk in charge, as a rule, is there all the time, do you?

[fol. 42] A. I go down to the car and look in there, and I could find out who is in charge of the car, but I never ask that question. I never consider that at all.

Q. Did you ever see Mr. Denton handle mail there at Jackson?

A. Yes, sir; I have seen him in the mail car passing through Jackson.

Q. You never did see him as clerk in charge, did you?

A. I can't say whether he was clerk in charge or not. I can't tell you that.

Q. These regulations here use the word "direction." "Under the direction of the transfer clerk or the clerk in charge." You will not tell the jury that Mr. Denton was the head clerk in charge of the transfer clerk would you?

A. No, sir; I would not. I know that he was not the transfer clerk, for Mr. Webb was the transfer clerk. But I don't know, he might have had charge of the mail car.

Q. As a matter of fact Jim Hunter was under your supervision and he continued just temporarily under their direction when trains come in, is that right?

A. No, sir; we employ a certain number of porters at the station there that work in the mail room at certain days and certain times, and those porters are strictly under the transfer clerk or the clerks in the cars. We do not attempt to go down there and superintend around that mail part, the mail porters. That is not with us because we leave that up to the transfer clerks.

Q. Jim Hunter, as a matter of fact, attended to the switches some, and the handling of baggage some, as well as the mails, did he?

A. Yes, sir; I will explain that to you.

Q. Just answer my question. Is that right?

[fol. 43] A. Yes, sir; that is a fact.

Q. What mail clerk has charge of him in attending switches for that railroad company?

A. None.

Q. What mail clerk has charge of him in loading baggage in baggage cars for the railroad company?

A. None.

Q. None?

A. None unless they load mail in there.

Q. What mail clerk has charge of him before the train comes?

A. Where? Down in the mail room?

Q. It does not make any difference where he is?

A. When working mail the transfer clerk is down there and superintends,—shows him the mail to pick up and load out and take to each train.

Q. What authority to repremand him or to lay him off, discharge him or fire him has the mail clerk?

A. The clerk in charge there just the other day, Mr. King, the Clerk there——

Q. (Interposing.) I didn't ask you about the other day.

A. On this date if Mr. Webb told me that he didn't do his duty that he had not done his duty and was away from the car, he would have been dismissed from the service at that moment.

Q. You admit that the only way the mail clerks of the United States could reach this nigger would be to report

him to you as his boss and you would have to deal with the man?

A. If they would report him for not doing his work, if he was impudent or sassy to any transfer clerk or a mail clerk in charge, and the transfer clerk would tell me that he wanted him taken off the job, I would take him off.

Q. The only remedy that the post office there has to reach [fol. 44] Jim Hunter is to report him to you and get you to take action, that is right, is it?

A. If Jim Hunter did anything out of the ordinary to any transfer clerk or to any clerk in charge, on any date, and they told him to get off the track, and that they did not want him there, I would not have let him get back on.

Q. Well, if it had been Jesse Denton?

A. He could have told him to get off.

Q. I am not asking you about getting off the truck. I am talking about firing him?

A. Yes, sir; he could have dismissed him from the truck and I would have dismissed him from the service.

Q. In other words, Mr. Denton would have to report him?

A. If he had done anything out of the ordinary.

Q. Let me see if I can get you to answer that question: Is there any transfer clerk, and there are three in Jackson, and there is a bunch of mail trains running through there that carry railway mail clerks, and the transfer clerks, have they any authority to hire or fire Jim Hunter?

A. They have authority to fire him if they want to.

Q. When they fire him who pays him off?

A. The railroad company pays him off.

Q. What railroad?

A. The Illinois Central.

Q. Do you mean to tell this jury that railway mail clerks not working for the Illinois Central Railroad Company have the right to fire an Illinois Central employee?

A. If any of these porters did anything out of the ordinary from his regular duty, as I said awhile ago, if he was sassy to one of the transfer clerks and he——

Objected to.

[fol. 45] By the Witness:

A. If at any time before this trouble happened one of the porters employed there by me did not load—did not

handle mail properly, in the mail room or any where else, if he did not load, or did not handle properly the mail, the transfer clerk could dismiss him, and tell him to go out of the mail room, or anywhere else, and I would send him to the office to get his money.

Q. But that does not go to show that the mail clerk could fire him himself, even if he told the porter that?

A. He had authority to take him and drive him out of the mail service there and out of the mail room.

Q. Jim Hunter does not handle the mail all day does he?

A. Yes, sir.

Q. Does he do something else besides handle the mail?

A. Not on days he handles mail.

Q. On what particular days does he handle the mail?

A. On that particular job Jim Hunter is known as relief man. He works on Thursdays, and by reference to my books I could tell on what date he was working—what date he worked the mail.

Q. Isn't this the way that he worked it, that on one day he attended the switches for the railroad company and then the next day he handled mail on the Y. & M. V. R. R. Co. and the next day he handled baggage or something else?

A. I could not say without looking at my book.

Q. Well, give us your best judgment about that?

A. He may work two or three days in the mail room and then the next day in the baggage room, and then one day as switch tender.

Q. Let me ask you this: Are you familiar with the regulations of the United States Government Post Office Department dealing with the porter*w* handling mail around terminals and depots?

A. Only as I tell you. We hire the porters and put them there to handle the mails.

[fol. 46] Recross-examination.

By Mr. Bozeman:

Q. Mr. Van Buren, did you see this accident?

A. I did not. I know nothing of it.

Q. You have no personal knowledge about it?

A. Not at all.

Redirect examination.

By Mr. Gipson:

Q. Mr. Van Buren, what arrangement does the Yazoo & Mississippi Valley Railroad Company have, or did they have, on April 21, 1927, in regard to the terminal facilities or depot facilities in handling the mail and so forth at the depot in Jackson, Mississippi, if you know?

A. Well, yes, sir; we have a mail room down stairs.

Q. The point that I am driving at did the Illinois Central Railroad Valley Company through some arrangement with the Yazoo & Mississippi Valley furnish the Yazoo & Mississippi Valley Terminal with porters?

A. The Illinois Central—all of the employees at the depot at Jackson, Mississippk, are carried on the Illinois Central pay roll.

Q. The Yazoo & Mississippi Valley Railroad Company through some arrangement with the Illinois Central would satisfy the Illinois Central in some way to furnish this service, is that true?

A. Before the Illinois Central took the A. & V. over it was handled on a wheel basis, the number of cars, and that is the way that it was paid for.

Q. The Illinois Central would collect from the Y. & M. V. so much for furnishing this service?

A. Since the Illinois Central bought the A. & V. it is all I. C. property.

[fol. 47] Q. Yazoo & Mississippi Valley Railroad Company, is that one of the railroads constituting the Illinois Central Railroad Company's system?

A. That is right.

Q. Now, the Illinois Central Railroad is a separate corporation from the Yazoo & Mississippi Valley, that is true? The Yazoo & Mississippi Valley Railroad and the Illinois Central Railroad are two separate corporations, are they not?

A. Well, I expect they are.

Q. You understand that to be true do you?

A. Yes, sir.

Q. The Yazoo & Mississippi Valley Railroad Company satisfies the Illinois Central Railroad Company in some way for furnishing the terminal accommodations there at

Jackson, and they do not furnish their own, but use the Illinois Central forces in loading and unloading their trains, including the mail?

A. I just told you that all employees, porters and everybody else, are carried on the pay roll of the Illinois Central and they work all trains that come into the station.

Q. Any extra mail space that is used by the United States mail authorities, they have to pay extra for that, do they?

A. They pay for the extra space; yes sir.

Q. You know it to be a fact that they do pay extra for it?

A. They contract for so much space on the trains to be run over the line, and for the extra space, if one sack or two or three sacks, they pay so much extra. I don't keep up with that.

Q. You don't know what that contract is?

A. I do not.

Q. But you understand that the Yazoo & Mississippi Valley Railroad carries the mail under some kind of a contract?

A. Yes, sir.

Q. You do know what space they are entitled to under normal conditions, do you?

A. Yes, sir.

Q. That is all.

(Witness excused.)

[fol. 48] JESSE H. DENTON, plaintiff, called as a witness, was sworn, and testified as follows:

Direct examination.

By Mr. Gipson:

Q. You are Mr. Jesse H. Denton?

A. Yes, sir.

Q. Mr. Denton, what is your age?

A. I will be thirty-two years old in August.

Q. In April 1927, how old were you?

A. I would have been twenty-nine years old that coming August.

Q. Are you married or single?
A. Married.
Q. Who did you marry?
A. Willie Spinks.
Q. Have you got any children?
A. One.
Q. How old is it?
A. Eight years.
Q. Where is your home?
A. At 812 B Street, Meridian.
Q. How long have you been living in Meridian?
A. All my life.
Q. Mr. Denton, on April 21, 1927, what was your occupation?
A. I was a railway postal clerk.
Q. Running from where to where?
A. Meridian to Shreveport.
Q. Meridian, Mississippi, to Shreveport, Louisiana?
A. Yes, sir.
Q. Over what railroad?
A. The Y. & M. V. R. R.
Q. What is commonly called the Yazoo & Mississippi Valley Railroad Company?
[fol. 49] A. Yes, sir.
Q. On that date and occasion did you receive a personal injury?
A. I did.
Q. Where about?
A. Jackson, Mississippi.
Q. What direction were you traveling?
A. West.
Q. That train was scheduled to leave Meridian at about what time, Mr. Denton?
A. At 11:55 I believe.
Q. And it was scheduled to get to Jackson, Mississippi, at about what time?
A. At that time I believe about 3:05.
Q. How many mail clerks were on that train when you got to Jackson, Mississippi?
A. Two.
Q. Who besides yourself?
A. Mr. Ike Worthington.

Q. Is Mr. Worthington living or dead?

A. He is dead.

Q. How much space was the railway postoffice occupying on that train that say when you pulled into Jackson, Mississippi, headed west, a half a car or a whole car?

A. We were occupying a thirty foot apartment car when we arrived there.

Q. What was the condition when you arrived there as to whether or not the mail was heavy or light?

A. It was very heavy.

Q. Caused from what, if you know?

A. From the Mississippi River having numerous washouts, railroad washups, and the mail being delivered by the route I was on.

[fol. 50] Q. When you arrived at Jackson was the mail large or small—larger or smaller than usual that day?

A. Unusually large.

Q. What per cent larger would you say?

A. One hundred per cent. We had twice as much outgoing mail than usual.

Q. When you pulled into Jackson, Mississippi, and found that large accumulation of mail and the two clerks on duty, where did you stay to pervorm your duties and where did Mr. Worthington stay to perform his duties?

A. Well, we had to load the baggage end of the car—had to rent that from the railroad company and fill it up and as there was a great deal of first class mail loading in that baggage car in direct pouches, Mr. Worthington consumed most of his time in that car there at the end of the car and received the registers from Mr. Webb, the transfer clerk, at Jackson.

Q. In the other car, the baggage car, what was there back there for Mr. Worthington, the clerk in charge to be doing, in the baggage car?

A. To check the pouches that he was going to get to ascertain how much of that car was going to be used so he could request a space for it of the railroad so the railroad could receive their pay.

Q. Was it necessary to make a report of a trip sheet and show how much space was used if they had to use extra space?

A. Yes, sir.

Q. Do you know whether or not extra space was used that day?

A. It was.

Q. Are you familiar with trip reports made out by postal clerks on trips like that?

A. Yes, sir.

Q. What is this I hand you?

[fol. 51] A. Trip report of Meridian and Shreveport train 203 of April 21, 1927?

Q. What date?

A. April 21, 1927.

Q. In whose handwriting is that?

A. Mr. Ike Worthington's.

Q. Is he the gentleman that is now dead?

A. Yes, sir.

Q. What date does that report represent the handling of the mail?

A. It reports handling the mail on Train 203 of Thursday, April 21, 1927.

Q. Is that the day you were injured?

A. Yes, sir.

Q. Does that show whether or not he ordered any extra space for mail going west out of Jackson, Mississippi?

Objected to the report as being incompetent and hearsay testimony.

Overruled; Exception.

A. Yes, sir; this shows that extra space was used.

Q. How much extra space does it show was used out of Jackson on that day?

A. Thirty feet—thirty feet in the other half of the car that we did not have.

Q. Did it double your capacity for space at Jackson, Mississippi on that occasion?

A. It did.

Q. You say it did?

A. Yes, sir.

By Mr. Gipson: We now offer in evidence as Exhibit A to the testimony of Mr. Denton the trip report that Mr. Denton testifies is in the handwriting of Mr. Worthington, the clerk in charge, who is now dead, and we ask that it [fol. 52] be so marked Exhibit A and identified.

Objected to; overruled; excepted;

Document handed to the court reporter, marked Exhibit A to the testimony of this witness, and is in the words and figures as follows, to wit:

Exhibit A, Testimony of Jesse H. Denton

Exhibit A, Denton

By Mr. Gipson: We ask permission of the Court to furnish a copy of this trip report inasmuch as it is a part of the permanent records of the Post Office Department of the United States for the Government of the Railway Mail Service.

By the Court: All right. Furnish a copy and you may withdraw the original.

By Mr. Gipson:

Q. Mr. Denton, who met you at the car door on this occasion to take the mail from the door?

A. Jim Hunter.

Q. Is he the defendant here, the colored man in the court room?

A. Yes, sir.

Q. Was that at the depot at Jackson, Mississippi?

A. Yes, sir.

Q. What did you do when you pulled up there and when Jim Hunter met you?

A. Well, he met me with an empty truck and I gave him what mail I had to go out.

[fol. 53] Q. Those trucks, are they pulled by hand or with horses?

A. Pulled by hand.

Q. What do they roll on?

A. A concrete run-way.

Q. Is the run-way built up by the side of the track where the trains pull in on it?

A. Yes, sir.

Q. Then the truck is on a concrete run-way and is pulled up by the side of the Railway Post Office at the depot there, how does the top of the truck compare with the floor of the car? Which is the highest and which is the lowest?

A. The truck is about eight or ten inches lower than the car floor.

Q. When the mail is taken from the railway post office where is it first placed?

A. On these empty trucks.

Q. Then after the mail is taken from the post office door and put on the empty truck, what did Jim Hunter do, if anything?

A. He pulled those trucks out of the way and brought up what he had to go in the car, which had been previously loaded on the trucks.

Q. Brought up on loaded trucks?

A. Yes, sir.

Q. How close to the door of the car did he pull those loaded trucks up?

A. Well, they usually pull right close to it. Right close to the car door.

Q. About how close would you say that he pulled up to the car door?

A. As close as he could reasonably pull it without hanging on to the train, and so forth.

Q. Where did Jim Hunter stand to place that mail from [fol. 54] the — on the platform in the door of the mail car? Where did he stand?

A. He stands on the truck.

Q. Where were you standing and where was it necessary for you to stand in receiving the mail into the railway post office?

A. About the middle of the car, between the doorways. He piled the mail into the car and I would get it and put it where it belonged in the car.

Q. Where would he put the mail when he took it off the truck when he would be standing up on the truck? Where would he put it so you could get it—get your hands on it?

A. He would lay it in the doorway of the car.

Q. What would you do with it then?

A. I would pick it up and pull it over into the aisle of the car where I could read the label on it and then pile it where it belonged in the car.

Q. Was the car cut up and divided so that the mail going to any particular part of the country could be placed in some certain place?

A. Yes, sir.

Q. That was necessary so as to know what mail was going to certain stations or depots?

A. Yes, sir.

Q. Just before the mail was all loaded was there any sacks of mail in the doorway or not?

A. There was; yes, sir.

Q. About how many? What is your best judgment?

A. I don't have any idea how many were in the doorway, —the number, because they vary in size. They vary so much in size that I can't tell.

Q. How high was it?

A. About two feet.

Q. When that mail was piled in the door about two feet [fol. 55] high what happened then?

A. This porter had three or four very large sacks, of mail on the truck that he had held unfil the last and he had put one of them in the door on the pile, and I had gotten it off, and he had thrown another—another sack of it over the pile and struck me on the leg with it.

Q. You say those sacks were different sizes. How do you designate those sacks in order to know what size they are?

A. There is No. 1 size and No. 2 size.

Q. What size sack is this sack before you here?

A. That is a No. 1.

Q. Is a No. 2 smaller or larger than this?

A. Smaller than that.

Q. You said something about reading labels a few minutes ago. What is this that I have my hand on?

A. That is the label holder of the sack.

Q. Is that where the label goes that you read?

A. Yes, sir.

Q. What is this piece of metal for?

A. That's to lock the lock with.

Q. This sack of mail that hit you on the leg, was it a No. 1 size or a No. 2 size?

A. No. 1 size.

Q. Do you know which end came in front of that sack of mail? Was it the end that the label was on, or the other end?

A. The end that the label was on came towards me.

Q. How come that sack of mail to hit you?

A. This porter threw it. This porter threw it over the pile into where I was standing.

Q. Did he throw it in there or did it fall off the pile and hit you?

[fol. 56] A. He threw it clear over the pile.

Q. What did you do when it hit you?

A. I reached down and felt of my leg and rubbed down it.

Q. Did you realize at that time that your leg was injured much?

A. Yes, sir; but how much I didn't know.

Q. Did he put the other sack, the last one in there, before the train left, or do you remember?

A. Yes, sir; we got all of the sacks in, but the last one he piled in the door.

Q. Where was Steve Webb, the transfer clerk, at the time this sack of mail hit you on the leg?

A. He was standing in the aisle of the car some two or three feet from the doorway, preparing to get out of the car when we got the door unblocked.

Q. Did you make any remark to him about it or not, or do you know?

A. I told him that the sack had burned my leg pretty bad when it struck—hit me.

Q. Do you know what was in the sack of mail that hit you?

A. No, sir.

Q. What is in this sack that is before the Court now, Mr. Denton?

A. Newspapers.

Q. Have you weighed that sack?

A. Yes, sir.

Q. What does this sack that is now before you weigh?

A. I think it is about 123 pounds.

Q. The sack that hit you, was it full or not full?

A. Yes, sir; it was full.

Q. Is this sack that is now before the Court a fair representation of the size and kind and the weight of the sack that struck you on the leg?

[fol. 57] A. Yes, sir.

Q. Was that sack made this way, the same material, label and holder and all?

A. Yes, sir; standard equipment.

Q. What did you do for your leg on the trip west?

A. Well when we got over about Delhi it began to bother me seriously and became very painful, and I bathed it in hot water that I got out of the wash basin of the car, and then again about Monreo it got so bad I had to lay down while enroute.

Q. You went on through to Shreveport?

A. Yes, sir.

Q. Did you spend the night at Shreveport?

A. Yes, sir.

Q. And how long do you stay there before you are supposed to come back home on your run?

A. Well, we are due to arrive at Shreveport about 10:30 P. M. but we did not arrive there until sometime after midnight, and it is shown in that trip report. Let me look at that again—about midnight I think. Yes, sir; we arrived there at 12:25 A. M.

Q. That was approximately two hours later?

A. Yes, sir. And then, of course, that was the next day, Friday the 22nd, being after midnight. Then that same day, Friday the 22nd, at about 3:30 in the afternoon, we were due to leave going east on the trip back to Meridian.

Q. You laid there about fifteen hours?

A. Yes, sir.

Q. Did you come back on the train that you were supposed to come back on?

A. Yes, sir.

Q. What was your condition coming back as to whether or not it was—how did your leg serve you coming back?

[fol. 58] A. It served me mighty bad.

Q. What did you do for it in Shreveport, if anything?

A. When I got there the drug stores had closed up and the hotel clerk he had a little bottle of camphor that he gave me and I rubbed it with that and went to bed, and the next morning when I got up it was no better. If anything, it was worse, and it had gotten to where I could not bend it without very serious pain,—very severe pain.

Q. Coming back on that trip on that train, did it hurt?

A. Yes, sir.

Q. Did you perform a part of your duties coming back or not?

A. I did; yes sir.

Q. Do you remember what time you got back to Meridian?

A. It was sometime about three A. M. Saturday morning.

Q. Did you ever go back on your run any more?

A. No, sir.

Q. Have you been physically able to go back any more?

A. No, sir.

Q. You got back in here on Saturday morning about two o'clock or something like that?

A. No; about three A. M.

Q. Did you have to go to see a doctor about your leg?

A. I did.

Q. How long thereafter?

A. I think the following Monday or Tuesday.

Q. That was Saturday, and you went Monday or Tuesday?

A. Yes, sir.

Q. What doctor did you go to see?

A. Dr. T. E. Royals.

Q. Dr. T. E. Royals, did he treat you?

A. He did.

[fol. 59] Q. Did you ever have any other doctors treat you?

A. Yes, sir.

Q. Who was the first man that treated you?

A. Dr. Royals.

Q. Who was the first man that cut your leg?

A. Dr. Royals.

Q. Where did he cut you on your leg? Just indicate on your leg with your hand?

A. Do you mean the place on the leg?

Q. Yes, sir.

A. Right here about three or four inches below the knee.

Q. Did Dr. Klein treat your leg?

A. Yes, sir.

Q. Did he cut it or not?

A. He did.

Q. Where did he cut it?

A. In the same place.

Q. How long did Dr. Royal treat you if you remember?

A. He treated me from that time, Monday or Tuesday following the Saturday I mentioned until May 6th.

Q. Then who began treating you?

A. Dr. Klein.

Q. How long did Dr. Klein treat you?

A. He treated me from May 6th until June 3rd.

Q. Then what did you do on June 3rd?

A. He had me transferred to the Illinois Central Railroad Hospital in New Orleans, and I remained there until July 22nd.

Q. Do you know whether or not Dr. Klein was the railroad company's physician?

A. Yes, sir; he was.

Q. Is he the one that directed you to go to the Illinois Central Railroad Hospital in New Orleans.

[fol. 60] A. Yes, sir.

Q. How did you travel in going to the depot to go to Louisiana?

A. In an ambulance.

Q. Was it necessary to haul you in an ambulance or could you walk?

A. It was very necessary. I could not walk.

Q. Did you do just what he said to do? When he said for you to go to New Orleans did you go?

A. Yes, sir.

Q. When you got to New Orleans—you arrived there on the New Orleans & Northwestern Railraod?

A. Yes, sir.

Q. How did you get out from the depot to the Illinois Central Hospital?

A. In an ambulance.

Q. How long did you stay in the Illinois Central Hospital at New Orleans, Louisiana?

A. From June 3rd to July 22nd.

Q. About seven weeks?

A. Yes, sir.

Q. During all that time who was treating you, do you know?

A. Well, the hospital there had several doctors, with Dr. Brown the Chief Surgeon.

Q. Did they cut on your leg or not?

A. No, except to remove the tissue for examination. They cut on there once. I mean by that they were not performing an operation, as we know it. They would cut in there and cut off what they would call tissue samples.

Q. They cut off enough flesh to see it?

A. A piece about as big as the end of your finger. Would chop that out for analysis.

[fol. 61] Q. Was that leg—was it hurting you during the time that you were there?

A. When they would dress this leg it would just throw a fit into me.

Q. When at the Illinois Central Hospital and before you went there did you co-operate with the doctors, and do what

they said to do, and take the kind of treatment they said to take in an effort to affect a cure?

A. Yes, sir.

Q. Did you stay at the Illinois Central Hospital until they told you to leave?

A. Yes, sir.

Q. When they advised you to leave what did you do?

A. I came back to Meridian.

Q. When you came back to Meridian where did you go?

A. I went to Dr. Klein again.

Q. Then did Dr. Klein go to treating you again?

A. Yes, sir.

Q. How long did he treat you then?

A. Until March, 1928.

Q. That was March after you got hurt in April?

A. Yes, sir.

Q. You got hurt in April before that?

A. Yes, sir.

Q. What happened in March, 1928, when he quit treating you, or why did he quit treating you?

A. I was sent to Dr. Anderson.

Q. Dr. Anderson? Is that Dr. Jedd Anderson, who operates the Anderson Infirmary or Hospital in Meridian?

A. Yes, sir.

Q. Dr. Anderson treated you?

A. Yes, sir.

Q. Beginning in March, 1928, how long were you under the care of Dr. Anderson?

A. From then on.

[fol. 62] Q. And are you under him now?

A. Yes, sir.

Q. Did you go to the hospital known as the Anderson Infirmary in Meridian, Mississippi, about that time?

A. Well, I was not confined to that hospital, but I went there for treatment quite a bit.

Q. You went there for treatment?

A. Yes, sir.

Q. Did you ever go there for an operation?

A. No; not to Anderson. Not to Anderson. Not to the infirmary.

Q. Was your leg ever operated on in Meridian?

A. Yes, sir.

Q. In whose hospital?

A. In the Rush Infirmary.

Q. All right. Let's go ahead with Anderson's Infirmary. You went to Anderson for examination and treatment, I believe you said, to Anderson's Hospital?

A. Yes, sir; he did some operating on my neck and side, but he did it in his office up here. He had his equipment in a room down in his office, and that is where that was performed.

Q. Now, when you were in Dr. Rush's hospital and had your leg operated upon, did he put you to sleep when he put you on the operating table?

A. The leg was cut three times. The first time that Dr. Royals cut into it I was not asleep. It was just lanced. The next time, on May 8th, Dr. Klein cut into it, and I was awake, and he cut a long gash in it, perhaps two inches long, and that was the worst thing that I ever went through with in my life there. That was on Sunday, and on the following Tuesday, which was May 10th, they put me under a general anesthetic to go in there and chisel and whatever they saw necessary to do to it, and that was done then.

[fol. 63] Q. They put you to sleep at that time?

A. Yes, sir.

Q. What size gash or hole did they cut in your leg when they operated on it and put you to sleep? How long was it?

A. Well, about three inches long, or about three and a half inches, perhaps.

Q. Did your leg finally heal up or not, the sore leg that was operated upon?

A. It healed over about a year after. It remained an open sore for about a year.

Q. What did Dr. Anderson do to try and get it to heal? Did you have any other sores on your person that developed about that time?

A. About a month after I went under Dr. Anderson's care, this place healed over on my leg and then immediately after that it swelled up here on my neck about half as large as a hen's egg, and one come on my left side in about the same proportion, and it became inflamed and disagreeble looking, and another *another* one came in my side after he cut the first one. He had to cut in those places, one in

my neck and one in my side, and another came right by the one in my side, and he also had to cut into it.

Q. Did all of those places—were they sore?

A. Yes, sir; very sore.

Q. Did it pain you any when he would cut into them?

A. I thought that I was going to have to jump out of the window to get away from up there.

Q. Mr. Denton, before you were injured, what was your condition with reference to whether or not you were able to perform your duties as a railway postal clerk?

A. I was an able bodied man and able to perform my duties as a railway postal clerk.

Q. Since you have been injured have you been able to [fol. 64] return to your duties?

A. No, sir.

Q. It is alleged here in your declaration at the time that the declaration was filed, which was the 22nd day of October, 1929, that up to that time you would have earned $6128.00 as salary as a railway postal clerk if you had not been prevented from doing so by this injury. Now, what would you have earned since October 22nd, 1929, up to this time, had you been working at your regular rate? That is approximately eight months, at your salary of $2450 a year? It would approximate $1600.00 would it?

A. Yes, sir.

Q. Adding that to $6128.00 how much would that make, approximately?

A. It would be $7728.00.

Q. In other words, you have lost $7728.00 in salary that you would have earned had you been permitted to continue to work?

A. Yes, sir.

Q. If you have no objection let the jury see your leg in order that they may see whether or not in their judgment your leg is out of order, or out of line, or if there is anything wrong with it, in order that they may know for their own selves whether or not you are putting on in this case?

A. I will let them look at it.

Q. Pull your breeches up and your sox down and turn around. Get over close to the jury, and if your Honor please, I want to ask the jury, just two or three of them

at a time, so that they can all get to see it good, three or four of you, gentlemen of the jury come here and look. Take these four first now. Now, you can all see. Now, Mr. Denton, what I put my hand on what is that?

A. That is the scar where my leg was injured.

Q. The right or left leg?

[fol. 65] A. The left leg.

Q. Suppose you let them see the other leg, too. Pull your pants up so they can see the size of your other leg, too?

A. Yes, sir.

Q. Which leg is the largest?

A. This one.

Q. The injured leg is the smallest?

A. The injured leg is the smallest leg.

Q. I want the jury to put their hands on your knee cap. I want them to work your knee cap. Let them all see how the knee cap works. Just put your finger on it, gentlemen. All right, what is that noise there at the knee cap, underneath the knee cap? Is there a noise there?

A. Yes, sir.

Q. What kind of a noise is it?

A. A cracking noise.

Q. A grating, cracking noise.

A. Yes, sir.

Q. Work your leg again?

A. Yes, sir.

Q. All right. Now you four men can move back and let the other four jurors move up and examine the leg. You four men put your hand here and listen, gentlemen. Is that the place there?

A. Yes, sir.

Q. All right, now, I will ask the other four men to come up. Come down here please. Get over there by the window so you can see the man's leg. Put your finger on Mr. Denton's knee cap there. Listen there for the noise. Feel it. Is that it, Mr. Denton?

A. That is it right there. That is the place right there.

Q. Show these gentlemen the different size of your legs, the leg that has been operated on and the other one?

[fol. 66] A. Yes, sir.

Q. Mr. Denton, how long has that grating, friction noise

been under that cap, and how long has it been since you could use it?

A. The first year I could not bend it, and it has been that way for two years. I was unable to walk on the leg for about a year, and unable to bend it and then there has been that grating in there the rest of the time.

Q. Now, in order that the jury may see whether or not that grating is natural in there, take your good leg and go over and show them how it works in order that they may know and that they may look at the knee. Just show them how you can work your good leg and let them feel that if they want to. Let the jury see whether or not the good leg is in the same condition?

By Mr. Bozeman: Let him sit up there and pull up both his breeches legs to the knee.

By Mr. Gipson:

Q. At the request of opposing counsel you might pull your breeches up and let them see both knees and the flesh, and your legs above your knees, in order that the jury may see both of them at the same time?

A. Yes, sir; I will do that.

Q. Is there any difference in the size of the calf of your leg below the knee there or not?

A. I don't think there is very much.

Q. There is a difference in it, in the size above the knee is it, and in the knee?

A. Yes, sir; in the large part of the leg.

Q. Have you measured those limbs above the knee to see what the difference in circumference or around them is?

A. Dr. Anderson has.

Q. Do you recall what is the difference in measurements of those two limbs?

A. About three inches in difference in the two of them.

[fol. 67] Q. You have had Dr. Anderson subpœn-ed here as a witness have you?

A. Yes, sir.

Q. You expect to place him on the witness stand before this jury?

A. Yes, sir. I mean three inches in circumference of the leg. Not the diameter through the leg, but around the leg.

That is the way the doctor measured it.

Q. Does Dr. Jeff Anderson operate Anderson's Infirmary and make reports to the United States Government about your condition there from time to time, as to whether or not you are able to work?

A. Yes, sir.

Q. Have you ever been directed or advised by Dr. Anderson that you can undertake to work on that leg in the condition it is in or not?

A. No, sir.

Q. In order that the jury may have some idea as to your duty, as you go on the train at Meridian, Mississippi, and handle mail from Meridian, Mississippi to Shreveport, Louisiana, how many hours is it from the time that you are required to go to that train at Meridian, and get on that train, until you are scheduled to get off of that train at Shreveport, Louisiana, if the train arrives on time, and the kind of work you do on that train, and how many hours work do you do on that train?

A. About twelve or thirteen hours.

Q. During that twelve or thirteen hours is there any relief man there to relieve you, or do you have to stay on that train until you get to your destination at Shreveport?

A. I stay on it. There is no relief man.

Q. You receive mail at various depots and catch mail at local depots on the fly and work it on the train, do you?

A. Yes, sir.

Q. On the run that you were running on at the time you were injured how many hours were you required to work on duty when you went on the train at Shreveport [fol. 68] until you got off at Meridian, Mississippi, if the train arrived on time at Meridian, Mississippi?

A. About an equal time, twelve or thirteen hours.

Q. Then when the train arrived late, as it did the day on which you were injured going west, arrived about two hours late, then how many hours did it make it necessary for you to work?

A. The two hours that it was late.

Q. Now, then, Mr. Denton, when you are working in your mail car and you received the mail in the door from the porters, what is necessary for you to do with the sacks

of mail before you read the label? In other words, do you have to carry it to some place in the car?

A. Yes, sir; I usually drag it over to the bin.

Q. With the condition your leg is in,—in its weakened condition and with the knee cap grating when you bend your leg, and your leg smaller than normal, are you physically able to handle sacks of mail such as the sack lying before you now on your regular duty and on your regular run, and on the run you had at the time that you were injured or not?

A. No; I am not.

Q. Does your leg bother you now? Is it waeker or stronger? How does it affect you even now?

A. I cannot walk on it except by straightening the leg completely when I put my weight on it and then just one way. And then has spells of going to sleep just below the knee, or from the knee on down to the foot, and then it is irritable and it keeps me awake at night.

Q. You say you can walk on it if you keep the leg straight?

A. Yes, sir.

Q. Can you stand up in this position and squat on your knee like that, and then come back up or not?

A. No, sir; not without the support of the other leg.

Q. I mean on your injured leg?

A. No, sir; I can't on that leg. Not on the injured leg.

[fol. 69] Q. Now, you say that it bothers you at night. How often does it bother you, occasionally or gegularly?

A. Regular, nearly every night. Occasionally I get by with it.

Q. How does this leg affect your general condition? Did you lose weight, or did you pick up weight during the time of the injury?

A. I lost weight. When I finally got so that I could stand on the scales I weighed 114 pounds.

Q. Now, you said that you went on the operating table and had to be put to sleep to have your leg operated on, and that you were cut on twice at other times, I believe you said. Now, how did you feel when you went on the operating table and to take the ether or chloroform to go to sleep? How did that affect you?

A. Well, it is a terrible mental attitude to have when you don't know whether you are going to come out of it or not. You feel a good — like you are going to be out of luck.

Q. You say that you didn't know whether you were going to come out of it or not. What did you mean by that?

A. I didn't know whether I was going to wake up any more or not. I might find myself dead.

Q. You mean by that you didn't know whether you were going to live or die?

A. Yes, sir.

Q. Now, there was something said about measuring a few minutes ago. I think Mr. Bozeman said something about it. Have you got any objection to Mr. Bozeman measuring your leg now if he wants to measure the circumference of your legs to see how big it is, have you got any objections to that?

A. No, sir.

Q. Do you give him permission if he wants to do it here in the presence of the jury?

A. Yes, sir.

[fol. 70] Q. Mr. Benton, during this period of time was it necessary for you to buy any bandages or gauze or medicine or anything of that kind for the purpose of treating your leg?

A. Yes, sir; I bought quite a bit after I got out of the hospitals.

Q. Was it necessary for your wife to go to New Orleans with you or not?

Objected to; sustained; exception.

Q. Were you in physical condition to make the trip to New Orleans without some one to go with you to take care of you and to look after your needs at the time that Dr. Klein, the railroad company's doctor advised you to go to the Illinois Central Hospital in New Orleans?

A. No sir; I was not.

Q. Did Dr. Klein furnish anybody to go to New Orleans with you?

A. No, sir.

Q. Who did go with you?

A. My wife and Mr. Grayson.

Q. That gentleman that is now here?
A. Yes, sir.
Q. What position does he hold?
A. Well, he is a clerk in the Railway Mail Service.
Q. Just a clerk working in the department?
A. Yes, sir.
Q. Was it necessary for your wife and Grayson to go with you in order that somebody could take care of you on the train?
A. Yes, sir; Mr. Grayson and one of the porters had to carry me in the train.
Q. Where was your baby during the time that your wife was in New Orleans with you?
A. She was left at the home of her grandmother, at Mr. Spinks' home.
[fol. 71] Q. You and your wife were separated from the baby during the time that you were in the hospital?
A. Yes, sir.

By Mr. Bozeman: We object to and move to exclude the testimony about being separated from the baby.
By Mr. Gipson: I agree that it may go out. It is not alleged in the declaration.
By the Court: I think it ought to go out.
By Mr. Bozeman: I also move to exclude the testimony wherein he said that he had to be accompanied by his wife and Mr. Grayson.

Overruled; exception.

By Mr. Gipson:

A. Have you had any expenses incident to the paying—such as incurring doctor bills and stuff like that during this treatment?
A. Yes, sir; I have had to,—$67.50 in hospital bills and $30.00 and a few cents doctor bills to Dr. T. E. Royals.
Q. Did you keep up or not with all of the expenses, medicine and things like that, other little expenses incident to treating yourself?
A. I did not keep up with those items.
Q. You don't know what that is?
A. I don't know what that is.

Q. Do you know what Dr. Klein's bill is or Dr. Brown's bill is in the hospital at New Orleans? You did not pay any of them?

A. No, sir; I did not pay any of it.

Q. This Jim Hunter that was a porter you testified removed the mail from the car and placed the mail in the car there at Jackson, Mississippi, the day you were injured, [fol. 72] what authority, if any, did you have over that nigger?

A. None.

Q. Did you have any right to fire him or hire him or to reduce his wages or increase his wages?

A. No, sir.

Q. Did you have any authority to make him do anything?

A. No, sir.

Q. In the event that the porter at Jackson, Mississippi, or any other depot, did not handle the mail right, or did not do anything that you felt like they ought to, what does the regulations direct you to do and in what way could you reach them?

A. Make a written report of the——

Objection, on the ground that the regulations are the best evidence.

Sustained; exception.

Q. What were your duties in such case? In what way could you reach the nigger?

A. Make a written report to my chief clerk.

Q. Whose office is over here in Meridian? What's his name?

A. Mr. J. M. Combs.

Q. Do you expect to produce him as a witness on the witness stand in this case?

A. Yes, sir.

By Mr. Gipson: We now offer in evidence Section 1520 of the Postal Law Regulations of the United States Government, a certified copy of the same, with certificate and seal, and will ask that it be marked Exhibit B to the testimony of Mr. Denton.

By Mr. Bozeman: I objected to it on the ground it is irrelevant and immaterial and does not tend to prove any of the issues in this case.

[fol. 73] By the Court: I think it is immaterial and will sustain the objection.

Plaintiff excepts.

By Mr. Gipson:

Q. Mr. Denton, what is your authority and where do you get your instructions and what are you guided by in your acts in handling the mail and dealings with the porters and employees of the railroad company?

A. We use the regulations prescribed in the postal laws.

Q. I will ask you to read this regulation to yourself in order that you may get it and know about it, and then I want to interrogate you about these regulations. Have you read it?

A. I have.

Q. In the event that a porter or any employee of the railroad company should do something detrimental to the mail service when you are on a run in the railway postoffice, is that a section under which you would make your complaint and report looking at the benefit of the mail service?

A. Yes, sir.

Q. Is it?

A. Yes, sir.

By Mr. Gipson: I now off it on that theory and ask that it be marked for identification and read to the jury.

By Mr. Bozeman: I make the same objection to it.

Sustained; exception.

By Mr. Gipson:

Q. Is this certified copy you have just read a part of Section 1530 of the Postal Laws and Regulations of the United States Government under which you worked?

A. Yes, sir.

[fol. 74] By Mr. Gipson; I now offer in evidence as Exhibit C to the testimony of Mr. Denton, a certified copy of Section 1272, Paragraph 25; Section 1286, Paragraph 5; Section 1294, Paragraph 3; Section 1658; Section 964, Paragraph 1; Section 1501 of the Postal Laws and Regulations of the United States of America, all of the same being certified to by the Post Master General of the United States of

America, under the great seal of the Post Office Department of the United States of America, and ask that it be marked Exhibit C to the testimony of the witness, all of the same having been examined and inspected by opposing counsel, and as we contend deals with the subject matter of this law suit.

By Mr. Bozeman: Defendant objects to Section 1272, Paragraph 25, because it is incompetent and immaterial and does not tend to prove any of the issues in this case.

We make the same objections to Section 1286, paragraph 5, and assigns the same reasons in the objection.

The defendant makes the same objections to Section 1294, Paragraph No. 3, and assigns the same reasons.

We make the same objections to Section 964, Paragraph 1 and assign the same reasons.

And we make the same objections to Section 1506, Paragraphs 1 to 8 inclusive, and assign the same reasons.

By the Court: I am going to allow them all in, all except Sections 964 and 1506. I will sustain the objections to them.

Exceptions taken by all parties.

By Mr. Gipson: I ask the Court to permit us to take a knife and cut these sections out.

[fol. 75] By the Court: That is immaterial to me.

By Mr. Gipson: I now ask the Court for permission for the Court Stenographer to remove the sections that the Court sustained the objections to and ask him to mark those Sections so he can identify them and keep them for the benefit of the record.

By the Court: That is all right.

*Co*duments passed to the reporter, marked Exhibit C to the testimony of the witness, Jesse H. Denton, and are in the words and figures as follows, to wit:

EXHIBIT C TO JESSE H. DENTON

Post Office Department, Washington, D. C.

I certify that the annexed constitutes correct and true copies of provisions in the 1924 edition of the Postal Laws and Regulations.

Walter F. Brown, Post Master General of the United States.

Section 1272, paragraph 25. Service over property owned or controlled by another company or a terminal company shall be considered service of the railroad company using such property and not that of the other or terminal company: Provided, That service over land-grant road shall be paid for as herein provided:

Section 1286, paragraph 3. Any person acting for an advantage to himself or another, by authority or consent of the railroad company, and representing in any manner the interests of the company or railroad in its business transactions with the public, will be regarded as the company's agent or representative.

[fol. 76] Section 1294, paragraph 3. At the joint stations where mails are due to be transferred from a train of one railroad company to a train of another, the mail after being unloaded from the incoming train will be held to be in the custody of the company operating the train to which the mail is due to be dispatched, and the responsibility for the transfer will then rest with that company.

Section 1568. The General Superintendent may assign railway postal clerks, when necessary, to perform duty at important junctions, to be designated "transfer clerks." "Transfer clerks" shall supervise the handling and transfer of mails at railroad depots where they are stationed; keep themselves correctly informed of the routes over which the mails should pass that are transferred at that point, of the time of arrival and departure of all trains upon which mails are carried, and the mail space authorized and space needed on such trains; notify their chief clerk or division superintendent in writing of any change of schedule which affect- mail connections; and perform such other work (such as filling runs, furnishing supplies, etc.) as may be directed.

Section 1501. All railway postal cars and mail apartments in cars and steamboats in use for the distribution of mail matter in transit shall be designated as railway post office."

By Mr. Gipson: Now, if your honor please, the plaintiff offers in evidence a certified copy of "Instructions and Rul-

ings with reference to Transportation of Mails by Railroad," the same being a certified copy, certified to by the Post Master General of the United States of America, under the Great Seal of the Post Office Department of the United States of America, and ask that the same be marked Exhibit D to the testimony of Mr. Denton. I am offering [fol. 77] the whole thing in order that the jury might not think nor the Court might not think that we are excluding one section and including another, but we are offering the whole in order that the whole regulations with the railroad may be before the jury.

By Mr. Bozeman: I object to it for several reasons. A large part of these rules, regulations and instructions have not got a thing in the world to do with this case, and will only encumber the record. That is our main objection.

Sustained; plaintiff excepts.

By Mr. Gipson: That is all. Take the witness.

Cross-examination.

By Mr. Bozeman:

Q. Mr. Denton, you were hurt on April 21, 1927?

A. Yes, sir.

Q. When did you first become clerk in the railway mail service?

A. November 1917.

Q. So at the time you were hurt you had ten years experience as a railway mail clerk?

A. Yes, sir.

Q. Practically over nine years?

A. Yes, sir.

Q. To be accurate?

A. Yes, sir.

Q. During that time you had filled many different positions with the railway mail service had you?

A. Yes, sir.

Q. Something has been said about the clerk in charge. What do you mean by the clerk in charge?

[fol. 78] A. The clerk who is in charge of a car.

Q. For instance, in this particular car at the time of the accident, I believe you testified that there was just a,— two mail clerks?

A. I did.

Q. Mr. Ike Worthington and yourself?

A. Yes, sir.

Q. Which one of you two was clerk in charge of that car?

A. Mr. Worthington.

Q. And that was by reason of the fact of his seniority was it? He was an older clerk than you?

A. Yes sir.

Q. And that gave him—as between you and Mr. Worthington, Mr. Worthington was the man in charge—controlling it?

A. Yes, sir.

Q. Now, you were not at that time a regular clerk were you? That is to say, you were what they called at that time a surplus clerk, were you?

A. Yes, sir.

Q. That meant that you did not have a regular run?

A. Yes, sir.

Q. When you say "yes, sir" you mean—

A. I mean yes, sir; you are correct.

Q. I am correct. You did not have a regular run?

A. Yes, sir.

Q. A surplus clerk's position in the mail service is a good deal like the position of a man on the railroad that is on the extra board. I don't know whether you know what that is or not, I will form my question another way.

A. I was going to tell you exactly what it was and what it was that made me a surplus clerk.

Q. What is a surplus clerk.

[fol. 79] A. A surplus clerk is a regular clerk whose run has been discontinued for some reason, and he is given the privilege of going anywhere in the country he wants to remove his residence. If he wants to move he can move immediately and take up a regular route. If he would rather retain his residence they give him extra work that they have and with a route over that corresponds which he had before. All it means is that I had no regular assignment. There is always a vacancy some place where they can use a man, even out of Meridian.

Q. And the Government has a system by which it can transfer a clerk from one place to another or from one position to another on proper application?

A. No; the position that they would give me would be exactly the same position. Perhaps it would be on the main line of the Illinois Central, I would have to move my residence.

Q. Now then, on this occasion at Jackson you were on the run from Meridian to Shreveport?

A. Yes, sir.

Q. And you and Mr. Worthington were in this mail car looking after the mail?

A. Yes, sir.

Q. For the government?

A. Yes, sir.

Q. Now, this car that you were in, was a compartment car?

A. Yes, sir.

Q. What do you mean by that?

A. That is a designation we have on cars where only half of it is used as a railway post office, with a partition about the middle of the car.

Q. The car itself, the entire car, is about sixty feet long?

A. Yes, sir.

[fol. 80] Q. And in the middle of that car was a partition running across it?

A. Yes, sir.

Q. And that really divided it into two halves of thirty feet each?

A. Yes, sir.

Q. Now, on this occasion were both compartments being used for mail?

A. Not until we arrived at Jackson.

Q. As far as Jackson from Meridian to Jackson, you were using only one compartment?

A. Yes, sir.

Q. That was in the front end, was it?

A. That was the railway postoffice compartment in it. The other end was purely a baggage car.

Q. And that railway postoffice compartment, you mean by that the front compartment, was fixed up with pidgeon holes and racks and all of those sort of things necessary for the operation of a railway post office?

A. Yes, sir.

Q. Now, this back compartment was just an open car like a baggage car?

A. Yes, sir.

Q. It had no pidgeon holes and no racks for the mail sacks, or anything like that?

A. No, sir.

Q. So ordinarily that would be used, as you say, the front end as a mail car and the back end as a baggage car?

A. Yes, sir; the back end belonged to the railroad provided we did not make a space requisition.

Q. But if you needed it for mail then you were entitled to take it for mail purposes?

[fol. 81] A. If it was empty.

Q. If it was empty?

A. Yes, sir.

Q. And when you got to Jackson you found an accumulation of mail?

A. Yes, sir.

Q. More than twice as much mail as you ordinarily handled?

A. Yes, sir.

Q. And your idea is that because of flood conditions, your best judgment is because of high water on the Mississippi river, and the inability to get mail across at other points, maybe Memphis, Greenville and somewhere up there, than this extra quantity of mail was delivered down to Jackson to be carried across the river at Vicksburg?

A. Yes, sir; that is right.

Q. And so there at Jackson you needed to use this rear compartment for loading this lot of mail?

A. Yes, sir.

Q. But you personally had nothing to do with the mail in the lower compartment at Jackson?

A. No, sir.

Q. You remained in this front compartment?

A. Yes, sir.

Q. And what was the difference between the duties you had to perform there in that front compartment from the duties which Mr. Worthington performed?

A. At what time?

Q. At Jackson, we will say?

A. During the entire time we remained at Jackson?

A. Yes, sir.

A. Mr. Worthington on that occasion had a great quantity of registered and first class mail of which he had to make

a record, and he was engaged in getting a record of these mails.

Q. What kind of mail is first-class mail?

[fol. 82] A. That is sealed matter.

Q. Sealed matter?

A. Yes, sir.

Q. Did you have to transfer some of it to Mr. Worthington?

A. Transfer from where to where?

Q. I don't know. I am asking you. I don't know anything about it and I am asking you what you had to do. You said that he was getting a record of the first class mail. For what purpose was he taking the record?

A. Well——

Q. (Interposing.) Was that mail—let me ask you another question. Suppose there were no——

A. (Interposing.) Suppose then that I be permitted to explain about the first class mail.

Q. That is what I am asking you to do. I would be glad if you would?

A. First class mail, gentlemen, is the letters and postal cards that we write back home when we leave, and they are handled separately from newspapers and parcel post matter. They are even carried in separate carriers which we call pouches, and are distinguished from what we call sacks. These are fastened up at the mouth with locks so that nobody can get into them without breaking the lock, and those pouches are made up for regular destination. For example, this train that we were on makes a pouch for Jackson, Mississippi, whether we have any mail for Jackson, Mississippi or not. We always have some mail for a large town like Jackson, and everything that goes into that pouch——

Q. (Interposing.) Excuse me. I don't object to all of that except for the consumption of time.

A. I was going to tell you why Mr. Worthington——

Q. But I am trying to find out what he was doing?

[fol. 83] A. These sacks we don't keep a record of, and the pouches, as I have explained, we do keep a record of, and Mr. Worthington was finding out at that time just how many pouches he had.

Q. He was taking a record of the pouches, the first class mail that were put on the car at Jackson?

A. Yes, sir.

Q. What were you doing—in a general way, I mean?

A. Well, in a general way I was loading and unloading the mail that was coming into the R P O department.

Q. Just the pouches put on the re—were you taking them on there?

A. The ones that came on there to be opened I did. The ones there were going all the way through, for instance from Memphis to Little Rock, I didn't have nothing to do with and they were put back in the baggage car.

Q. This Mr. Worthington was making a record of?

A. No; he was making a record of all pouches received on the train.

Q. All right, in the same compartment or where?

A. Some in one and some in the other department.

Q. At the time that you were hurt he was in the same compartment that you were?

A. I think at the time I was hit he was sorting registers that he had just signed for from Mr. Webb.

Q. And Mr. Steve Webb was also in the car there?

A. Yes, sir.

Q. He was standing right there near the door where you claimed to have been hurt, was he?

A. Well now, the forward end of this car is the storage end. It is similar to a baggage car with just these little stanchions in there that you can pile sacks in so as not to [fol. 84] become mixed, and all the mail that we were putting in there was going all the way through intact, we will say. The sacks that I did not have to open were going into that end of the car, and the mail that I had to open and distribute was going back in the direction, in the end towards the direction of Mr. Webb, where he was, and Mr. Webb was standing right near me preparing to get out of the car, out of the side of the car when we had cleared the door sufficiently.

Q. Mr. Worthington was also back in the rear end of the compartment?

A. About twenty-five feet away from me.

Q. Now, the door that they were loading mail in was on the side of the car?

A. Yes, sir.

Q. Was it in the middle of this thirty foot compartment or nearer one end than the other?

A. Nearer the forward end.

Q. Nearer the forward end?

A. Yes, sir.

Q. Give the jury some idea about how far the door is from the forward end of that car?

A. Well, they vary. Do you mean this particular car?

Q. This particular car?

A. My judgment is that it was approximately ten feet from the forward end of the car.

Q. Ten feet from the end?

A. Maybe not that far. Maybe eight feet.

Q. From the door to the forward end of the car?

A. To the head end of the car.

Q. Then the door was how wide? Two feet inches,—— too feet ten inches was it?

A. I believe it was.

[fol. 85] Q. And that leaves them about how far from the door to the back compartment?

A. Back in which direction to the rear. We have points we call the forward end and the rear end.

Q. I call the rear the back. The back to me. Wherever he has his back here, I call that the rear.

A. I just tole you that the car was twenty-five feet, but I was in error about that. It is about twenty feet.

Q. About twenty feet?

A. Yes, sir.

Q. Now, describe this door, the dimensions of it, to the jury. I will strike that question. Mr. Benton, at my request, at the last trial of this case, did you make some measurements of that particular door for me?

A. Yes, sir.

Q. And you made a pencil diagram of the door?

A. Yes, sir.

Q. Look at this and see if that is the one you made?

A. Yes, sir.

Q. Now, this is a diagram of the door through which the mail was being loaded into the car?

A. Yes, sir.

Q. Now, that door—the opening I am speaking of now, is how high from the floor of the car, to the facing, the top facing? Six feet, isn't it?

A. No; it is 5 5½ inches.

Q. Five feet, five and a half inches?

A. I know you are mistaken. *A.* Let me see that again. I don't believe I made the measurement to the top. It is approximately six feet, we will say.

Q. About six feet?

A. Yes, sir.

[fol. 86] Q. And how wide is the door facing between?

A. Two feet ten inches.

Q. Now, this diagram shows a rod running across the door four feet from the floor, running entirely across the door. It has a letter A at one end and a B at the other. What is that?

A. That is a part of the catcher hook.

Q. And then it shows a little curve attachment or something there, a rod running diagonally down towards the side of the door, what is that?

A. That is also a portion of the catcher arm.

Q. And you show above this rod a vertical stem or something. What is that?

A. That is a handle of this catcher arm.

Q. Now, you have got marked on here the distance from the floor of the car to a high point on that catcher arm three feet and three inches? That is right?

A. Yes, sir.

Q. Now, this catcher arm extends beyond the door facing, does it?

A. Yes, sir.

Q. Now, where it crosses the door facing on the other side you have got it marked twenty-eight inches?

A. Yes, sir.

Q. That is 28 inches from the floor to the point on the forward end of that door—forward facing of the door where the diagonal rod crosses?

A. Yes, sir.

Q. And then this handle up above here is shown by this thing 1 foot five inches long, that is right?

A. Yes, sir.

Q. Now, that is what you call those rods, the handle I am talking about there is what you call the catcher arm?

[fol. 87] A. Yes, sir.

Q. Now, in order that the jury may know what that is, here you have a pouch put up on a mail crane at a place where the train is not going to stop. Now, the mail agent

wants to catch the pouch while the train is in motion—running, and he catches hold of this handle up here and pulls it in to him, and that rod there is diagonal, this one here, and the horizontal rod would rotate on that catcher arm to a horizontal position like this?

A. Yes, sir.

Q. And that would catch the sack?

A. Yes, sir.

Q. And that arm would fall back down this way in a normal position when not using it?

A. Yes, sir.

By Mr. Bozeman: Now I will ask the stenographer to make this diagram and identify it as Exhibit E to the testimony of Mr. Denton.

Document handed to the court reporter, marked Exhibit E to the testimony of the witness, Jesse E. Denton, and is forwarded herewith.

Exhibit E, testimony of Jesse E. Denton.

[fol. 88] Q. So the mail loaded into this door from the outside had to be placed through under this diagonal arm? That was the space that was had there to put that mail in?

A. Well, there were three ways of getting mail in there.

Q. I am talking about——

A. (Interposing.) You had me then havin*t* to put it under there.

Q. I thought maybe you misunderstand my question, and I was going to explain it to you. I am confining my question, Mr. Denton—trying to do so now to that particular car and at that particular time, and how it was then. Of course, this could be moved up and down by hand, but I am talking about how it was at that particular time?

A. Was the hook locked?

Q. Yes, sir.

A. I don't know.

Q. You don't know?

A. No. I was going to tell you that there were three possible ways of coming in there, but if you don't want it I will not tell you.

Q. I don't think that it makes any difference at all. You don't know whether the hook was in that position at that time or not?

A. No, sir.

Q. You don't know about that one way or the other?

A. No, sir.

Q. Now, the way that this mail ordinarily was loaded in there you say, this porter would pull his truck of mail up on the outside of the car door?

A. Yes, sir.

Q. And then he would get up on the truck so he could handle and lift the mail all right?

A. Yes, sir.

[fol. 89] Q. And the floor of the truck was about six or eight inches as it stood there lower than the floor of the car?

A. I believe I testified that it was about eight. Possibly eight inches. I am not sure of the exact measurement. It was lower than the floor of the car.

Q. A little bit lower than the door of the car?

A. Yes, sir.

Q. And he would stand on the truck and catch this mail one by one and throw it in to the door of the car?

A. Yes, sir.

Q. That is what the porter would do?

A. Yes, sir.

Q. And you were on the inside, and just as he would put the mail in you would pick it up and examine *and* label on it and see where it was going, whether to Vicksburg or Shreveport, or what about it, and then you would take it up and put it in the car where it should be in order that it might be systematically handled?

A. Yes, sir.

Q. Some of it, on this particular occasion, the different kinds of mail had been loaded there, some of it was put back in the end where Worthington was?

A. Not all the way back.

Q. I didn't ask you all the way back. I said in the end?

A. Yes, sir; some in that end.

Q. You said not all the way back. How far back in there then at that time?

A. Oh, four or five feet.

Q. Only four or five feet?

A. Yes, sir.

Q. What was in that four or five feet that it was not put in?

A. I tell you, as I explained awhile ago, we have mail [fol. 90] that is made up intact, which we don't have to go into it. If I get a sack of it I have got to carry it up into the storage end of the car and pile it in to one of those bins.

Q. That's in the forward end of the car?

A. Yes, sir; and when we get sacks and pouches, first class mail that is addressed to the route that we are on, that we have to open and distribute.

Q. Where did you carry those pouches to?

A. Some in the aisle back in the car towards where Mr. Worthington was, or in the bins on each side this aisle in the end of the car.

Q. Did you—these bind extend all the way back to the back end?

A. No, sir; they stopped when they reached the racks in there.

Q. And then did the racks extend back?

A. Yes, sir.

Q. Any of this put in the racks?

A. No dumping in the racks. Empty sacks were in the racks.

Q. Now, in loading you take a sack that comes in the door and you read the label and see what it is, and if it is one that has to go forward, to the forward end, you carry it there and put it there, and if it is one that has to go in the rear end you carry it and put it there?

A. Yes, sir.

Q. So you would pass from the door backward and forward, which ever way you had to go?

A. Yes, sir.

Q. And during the time that you were handling the mail on the inside of the car the porter was piling the mail in the door from the truck?

A. Yes, sir.

[fol. 91] Q. Now, on account of the extra large quantity of mail there the time for the train to go had—I mean the stopping time for that train at Jackson had expired, had it?

A. Yes, sir; my recollection is that is a fact.

Q. At the time that you got hurt there?

A. Yes, sir.

Q. You had ten minutes just at Jackson as a normal stop, had you?

A. Yes, sir.

Q. You required more than the ten minutes to put the extra amount of mail on the train?

A. Yes, sir.

Q. The train was waiting for the mail to be loaded in order that it might go?

A. Yes, sir.

Q. And the nigger porter was naturally hurrying to get the mail on so that the train could go?

A. Yes, sir.

Q. And you were hurrying to get it out of the door way as fast as you could so it could go?

A. Yes, sir.

Q. The United States Government and the mail postal authorities are as much interested in trains maintaining their schedules and moving promptly as passengers or express people or anybody else?

Objected to; sustained; exception;

Q. Now, you were not able on this occasion—you were not able to get the mail out of the door way and distribute it as fast as the nigger porter could pile it in the door?

A. No, sir.

Q. Because all he had to do was to stand on the truck [fol. 92] and pitch a sack of mail into the doorway, and you had to examine the label on that sack and find out where it was going and place the sack in its proper position in the car?

A. Yes, sir.

Q. So you had a good deal more to do in placing the sack on the inside than he did to throw it in?

A. Yes, sir.

Q. And now at the time you were hurt, or just before that there had accumulated in this door way a pile of mail two or three feet high.

A. I am sure that it was not three feet high, but I will not say as to the exact height.

Q. You did testify on the other trial that it was about two and a half feet high?

A. I did.

Q. That's your best judgment?

A. I will say near about two feet.

Q. Well, do you think your recollection is better now than it was on the last trial?

A. No, sir; but I am more familiar with what two feet is.

Q. When you swore before, when you testified that in your judgment that it was about two and a half feet high, that was your judgment then?

A. I will say about two feet.

Q. Take the height of that table from the floor, that is about thirty inches, is it not?

A. That table is thirty inches all right.

Q. That is two and a half feet?

A. Thirty inches is two and a half feet.

Q. That is what I say. That's what I am trying to get at, about how high it would be. Your best judgment about [fol. 93] it now is that it would be about two feet high?

A. That mail was not as high as that table.

Q. Now, Mr. Denton, getting back to the mail. This mail was in sacks of various sizes?

A. Yes, sir.

Q. Some of that was in pouches?

A. Yes, sir.

Q. Small?

A. Yes, sir.

Q. And some in large sacks like the one lying on the floor?

A. Yes, sir; there was not any sacks in there as large as that sack because there were only four of those sacks and they were still out on the truck with the exception of the one I drug down in the aisle and had in my hand. So there was none of those sacks of the same capacity—I mean they were of the same capacity, but not filled as full as that.

Q. Let me see now, if I understand you. On this truck there — four of these big sacks? Four of them originally?

A. Yes, sir; there or four I will say and one in my car.

Q. One had been put in the car and you had examined it?

A. Yes, sir; but it was not in the door. I had removed it.

Q. You had read the label on it and dragged it away from the door one way or the other?

A. I had gotten it off from the pile in the door. If that sack had been on top of the pile he could not have thrown another sack in.

Q. Would he not have had room underneath the catcher arm to put another sack through there?

Objected to.

Q. If the catcher arm was in its normal position like it is in the drawing—on the diagram, and if these sacks had [fol. 94] been in there, and one of these big sacks was already in the door way, then you don't think that he could have gotten another big sack in there?

A. Let's get the thing straight. You are trying to muddy the thing up.

Q. I am not trying to muddy it up at all. You may not have understood my question. I just want to get your idea about it and I do not want to cross you and am not trying to muddy anything. I do not want anything in this record except that which is entirely true. You stated, or at least I understood you to state that one of these sacks had been put in the door way already and that he could not have put another one through. Did you say that?

A. On top of the pile if the hook had been pulled back and I told you before that I didn't know whether the hook had been pulled back or not.

Q. But you do know that one big sack had been put in there before you were hurt?

A. I had one in my hand, that is, it was on the floor and I was reading the label.

Q. You had this one big sack in your hand and were reading the label at the time this other sack came in and hit you on the knee?

A. Yes, sir.

Q. Now, in order for the sack to have hit you on the knee you must have been standing just opposite the door?

A. I was.

Q. And how close would — say you were standing to the door?

A. How high was the sack?

Q. I don't know.

A. Well, let me look at the sack.

Q. If you want to tell the jury how wide and how thick it was just set it up?

[fol. 95] A. I was standing here, and was as far as from here as that is to the door. That would approximate it.

Q. You testify——

A. (Interposing.) About five feet.

Q. Now, this sack——

A. (Interposing.) And there was a sack in the doorway and I was back of the sack in the aisle.

Q. You were standing near the pile—standing inside of the pile of mail in the door?

A. Yes, sir.

Q. Now, this big sack that you were examining at the time. In what position was it in?

A. I had gotten it over in the aisle and was standing about in this sort of a position reading it. I had it standing up on end.

Q. You had it reading it. In other words you were standing kind of sideways?

A. No; I was facing the door but I had drug the sack off. I was sort of in this position.

Q. You was looking at it and kind of holding it on one side reading the sack?

A. I had drug it off and was looking at the label and was standing almost directly towards that door.

Q. I see.

A. I think that is correct.

Q. You tell the jury that is the position in which you were standing?

A. When I got it off the pile I was standing in a position about like this, with my left leg exposed to the door.

Q. You turned your right side along lengthwise of the car reading the label and your side facing towards the door?

A. I could have.

[fol. 96] Q. I am talking about what you were doing, and not what you could be. I am trying to get your position in the record there?

A. My *fact* was angling forty-five degrees in the car.

Q. Well, what would it be, so the jury may understand and the stenographer write it down?

A. Forty-five degrees to the forward line of the car.

Q. Reading the label when the other sack came in?

A. Yes, sir.

Q. Now, that was one of the last sacks on the truck?

A. Yes, sir.

Q. You think that there were two more after the one that came in and hit you?

A. Yes, sir.

Q. You don't know what part of the sack struck you on the leg do you?

A. No, sir.

Q. You don't know whether it was the side, or the side rolling down?

A. The end of the sack struck me.

Q. That is what I am asking you?

A. You asked me what part. I misunderstood you. I beg your pardon. I thought you wanted me to identify the corner of the sack.

Q. I just want to know——

A. (Interposing.) The end of the sack.

Q. The end of the sack or the side?

A. The end of the sack struck me.

Q. Was the end that had the label on it?

A. Yes, sir.

Q. Now, this iron attachment that you have on here that you put the label in. That is not a part of the sack? That is a little slide that goes on the card, is it?

[fol. 97] A. Well, yes, sir; it is a part of the sack. It is not attached. It has to do with the sack.

Q. But that is not the question I am asking you. This metal slide here serves both as a holder for the label and also as a catch to hold the sack closed, does it not?

A. Yes, sir.

Q. And the sack is closed by drawing a string or a cord in the top of it, is it?

A. Yes sir.

Q. And this metal part here slides up and down on the cord?

A. Yes, sir.

Q. And it is not attached to the cloth of the sack?

A. No, sir.

Q. So it is movable? It moves about on the cord?

A. Other than that the cord——

Q. (Interposing). It is not attached to the cord?

A. Just in that way.

Q. You don't know whether that cord—that metal container struck—that metal container or attachment struck your leg or whether the edge of the sack struck you, do you?

A. I will not attempt to say whether it was the metal container or whether it was the contents of the sack that struck me.

Q. Now, you did not say anything at all to the nigger about it did you?

A. No, sir; he did not stay there.

Q. The truth of the business is, Mr. Denton, until you got on the other side of the river, I believe you stated, you did not realize or think that your leg had been hurt to amount to anything?

[fol. 98] A. Let me get that straight?

Q. I want you to state——

A. (Interposing.) I knew that the leg had been simply burned at the time that this sack was thrown in, and as we pulled out of town I told Mr. Webb that I was hurt, and other than that I will admit that I thought just at the moment I thought it was just an ordinary bruise.

Q. Now, when you looked at it, when you finally pulled up your breeches leg and looked at the place that was hurt where were you when you did that?

A. I think it was called Red Neck, shortly after we had gotten out of the rush at Jackson.

Q. Then it was merely a bruise or was the skin knocked off, or was it cut? I mean now when you first looked at it before it got sore or anything? What was the nature of the hurt?

A. The way I hurt it was running all the way down the front of my leg.

Q. From the knee down to the ankle?

A. Practically so. Right on down, from the knee right on down.

Q. And was the skin broken?

A. It was not except minutely broken which made it red and irritable.

Q. Something like a scrape?

A. Well, the skin perhaps in the sense that you are trying to bring out was not torn in there, but it was ruffled up and red and irritated.

Q. Like it had been scraped?

A. The upper, the top, there was a spot there apparently where something had struck it.

Q. Was the skin broken? Did it cut through the skin?

A. No, sir; the skin was not penetrated.

Q. You first treated yourself by putting hot water on it?

[fol. 99] A. Yes, sir.

Q. Then when you got to Shreveport you got some camphor from the hotel clerk and bathed it?

A. Yes, sir.

Q. And the next day you got some linament and put on it?

A. And I think I used the rest of the camphor.

Q. Did you get some linament and put on it?

A. No, sir.

Q. Did you not testify on the other trial that you got some Sloan's Linament and put on it?

A. Not in Shreveport. You have got me in Shreveport now.

Q. Yes, you are in Shreveport. Didn't you testify that while you were there you got some linament—Sloan's Linament and put on it?

A. I think I made one application of Sloan's Linament at home.

Q. After you got back home?

A. Yes, sir.

Q. The only thing you did about it at Shreveport was to bathe it with camphor?

A. And hot water.

Q. Now, during all of your nine years and more as a mail clerk you had been helping in the loading and unloading of mail like this?

A. Yes, sir; if the assignment called for it.

Q. What did you say?

A. If the assignment called for that.

Q. Well, you had had a great deal of experience in it?

A. I had had only ten years.

Q. That is right. You admit that you had had ten years experience?

A. Yes, sir.

[fol. 100] Q. And you had always done in some way——

Objected to.

Q. The way they had been loading there at Jackson was the usual way of loading the mail?

A. No, sir.

Q. It was usual in some particulars. It was usual for the porter to roll the truck up there on the outside, was it and load the mail on it?

A. Yes, sir.

Q. And it was usual for the porter to get up on the truck and pick the mail up and put it in the door there of the car?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. And it was usual for you, the mail clerk, to stand there in the door where he was loading it and pick it up—pick up the sack and examine the label and pull it away and put it where it belonged?

A. Now, that is where it was unusual, the unusual part of it, where they did not have a mail clerk who would help with this loading so they could keep the door clean. Two men could keep the door cleaned out and there would be no accumulation there and close up the door-way.

Q. The unusual part of it was that the mail accumulated there in the door-way there because of the fact that you could not move it away as fast as the porter could put it in?

A. The fact that we had not the help to operate with.

Q. And by yourself you could not move it away fast enough?

A. No.

[fol. 101] Q. There were some days, at intervals, that you had an extraordinary amount of mail, did you?

A. I don't know of any such condition as the history of the Mississippi flood in 1927.

Q. And at that time that was an unusual situation?

A. Yes, sir.

Q. The method of loading the mail there at that time was the usual method that you have just described to the jury?

A. It was not usual to pile it up in the door and throw the sacks over on me. That was unusual.

Q. Just answer my question. I didn't ask you that.

A. That is a mooted question in the case.

Q. I am not trying to ask you that. I am trying to ask you if the method of loading the mail there was the method used everywhere, and isn't it continued up to the present time, to have the mail brought up there on trucks and put into the car by the porter?

A. It was unusual to throw a sack over there and hit me —over the pile accumulated in the door.

Q. But he had to throw the sack over the top of it, or he had to place the mail far enough in there to keep it from falling back out, didn't he?

A. Yes, sir.

Q. That was necessary?

A. Yes, sir.

Q. And if he had a pile of mail in the door there, and the mail was piled up, and he had a large sack to put in, he would have to put it on the inside of the pile in the door in order to keep it from rolling back out of the door?

A. It would have to be placed on the pile.

Q. But he would have to place it in far enough on the inside of the pile to keep it from falling back out of the car, would he?

[fol. 102] A. Yes, sir; he would have to put it there so that it would — fall out of the car.

Q. That is what I am talking about. Now, when this sack rolled down some of the other sacks rolled down with it, did they?

A. I don't know that they did.

Q. Do you know what you testified about that before?

A. Yes, sir; I think so. I think that I told them that I didn't know whether it knocked *d*ome of them off of the pile or not.

Q. You can't remember that? You are not sure one way or the other about that?

A. No, sir; I am not sure.

Q. This thing happened, of course, in the day-time, Mr. Denton?

A. Yes, sir.

Q. At about twenty minutes or half past three in the afternoon?

A. Twenty minutes after three in the afternoon.

Q. Standing on the inside of the car where you was in the mail car, you could see, of course, out through the door way the truck load of mail?

A. Yes, sir.

Q. You could see how much mail was on the truck?

A. Yes, sir; if I had looked out.

Q. You could see it?

A. Yes, sir; if I had looked out I could see it. It was visible from the inside.

Q. You could have seen it? It was visible to you if you had wanted to see it?

A. Yes, sir.

[fol. 103] Q. And you could see how much remained to be loaded?

A. Yes, sir.

Q. And you could see whether they were large sacks or small sacks?

A. I did not inspect any of the sacks of mail that close. You ask me if I could have done it and if I did it are two different things.

Q. I am talking about what you could have done?

A. I could have got out and measured each sack.

Q. I know.

A. And weighed them if——

Q. (Interposing.) I am not trying to quibble with you about it, Mr. Denton.

A. I did not do that.

Q. I said that you could stand on the inside at least two foot of this door-way and could have looked out there, if you had wanted to, and see all about that truck could you?

A. Yes, sir; I would probably have had to stoop over.

Q. You did testify that he only had about two more on the truck, did you?

A. I did.

Q. You did know what was out there?

A. On that particular truck?

Q. I am talking about this particular truck and this particular nigger loading out there on that particular truck?

A. Yes, sir.

Q. And you knew what he had to throw in the door?

A. Yes, sir.

Q. And you could see the nigger and knew how he was doing it? You were in full view of the nigger, were you?

A. Yes, sir.

[fol. 104] Q. When he was working there?

A. Yes, sir.

Q. What is the limit of weight that the Government permits to be put in a No. 1 sack?

Objected to.

By the Court:

Q. Do you know what the limit is of your own personal knowledge?

A. I know what the regulations are.

Objection overruled; exception.

By Mr. Bozeman:

Q. Answer the question?

A. I know that the regulations are 125 pounds.

Q. You said this sack would weigh about 123 pounds?

A. Yes, sir.

Q. Of course, this is not the sack or the contents of the sack that hurt you?

A. No, sir.

Q. This is just like the sack that you have brought here to be seen?

A. It is a similar sack.

Q. Not the sack, but a similar sack?

A. Yes, sir.

By Mr. Gipson: Now comes the plaintiff and moves the Court to exclude what the regulations show about the weight in a sack on the ground that the regulations are here and is the best evidence, and we now renew our offer and now offer again the regulations which we offered just a short time ago.

Overruled; exception.

By Mr. Gipson: Now comes the plaintiff and offers in [fol. 105] evidence the Postal Laws and Regulations of the United States Government that have been heretofore offered, and which have been certified to by the Post Master General of the United States, and we ask that the Court now permit them to be introduced and read to the jury.

Overruled; exception.

By Mr. Bozeman:

Q. Now, Mr. Denton, you knew that the train had consumed all of its usual standing time? Did you know that?

A. Do you mean that I knew it by comparing it with my watch?

Q. I want to know just what you knew about it?

A. I knew that we had been there approximately our usual time.

Q. And you knew that the nigger porter was working hurriedly so that he could get away and the train could go?

A. He did not until he got to the last three or four sacks.

Q. As he got down towards the last of the mail did he begin to work hurriedly?

A. After he hurt my leg. After he hurt my leg he threw the other two sacks in hurriedly and left—the train left.

Q. Up to the time that he hurt your leg he was not making speed at all?

A. He was not because he closed the door—he kept piling up mail in the door and blocking the door and he could not throw any in until I could get it out.

Q. Now, isn't it a fact that that leg had been hurt before this?

A. No sir.

[fol. 106] Q. Had you been in a wreck on the train about six or eight months before that?

A. I was in a wreck on the day before Transkiving at Quebec, Louisiana, in 1926.

Q. That was how many months before this?

A. From November until April.

Q. That would be six months?

A. Five months.

Q. How long was you laid off at that time on account of that wreck?

A. About eighteen days.

Q. Isn't it a fact that your leg was hurt in that wreck?

A. No, sir.

Q. You did not hurt your leg?

A. No, sir; I did not hurt my leg.

Q. What kind of an injury did you sustain that made you lay off?

A. In that wreck?

Q. Yes, sir?

A. An injury to my right shoulder—my right arm.

Q. Did you or not strike your knee on one occasion on one of the sides or the end of a seat in the picture show and hurt it?

A. I did not.

Q. You did not do that?

A. No, sir.

Q. And in this wreck the only injury you received was to your shoulder?

A. Yes, sir.

By Mr. Gipson: Now comes the plaintiff and gives notice to the defendant to produce the record in regard to the questions he put to the plaintiff, Jessie H. Denton, cov-

[fol. 107] ering the injuries that he sustained at Quebec in the wreck in 1926, as I understand, at the hands of the railroad. The defendant here and now gives notice to produce it before the trial is concluded in order that this jury may see just exactly what the truth is about the injury at Quebec so far as the wreck was concerned. This trial, no doubt, will not be concluded for a couple of days and that will give them ample time in which to produce the record so that the jury may know all about it.

Overruled; exception.

By Mr. Bozeman:

Q. In order that we may get the dimensions of the No. 1 sack in the record, state, please sir, what the dimensions of it is when it is full?

A. Like it is now?

Q. Yes, sir; like it is now. Approximately how long is it?

A. That sack is about two and a half feet long.

Q. About how wide?

A. About eighteen inches wide.

Adjournment here taken until 8:30 A. M. Tuesday, June 17, 1930.

Tuesday, June 17, 1930, at 8:30 A. M., court met pursuant to the above-noted adjournment and the introduction of testimony on behalf of the plaintiff is resumed.

All parties present as of yesterday.

JESSE H. DENTON, plaintiff, recalled as a witness for further

Cross-examination.

[fol. 108] By Mr. Bozeman:

Q. I want to try and clarify several issues in the case that seem to me to be more or less confused by asking you about some statements you made in your testimony on the former trial of the case, and in order that you can keep up with me I will let you look over my shoulder as I read it. Is it a fact that when you testified before that you were

asked this question and made this answer: "About how high was the mail in the door," and you answer-, "About two and a half feet high, I judge."

A. I answered in that way. I told you on yesterday that I said that.

Q. I think you did. In reference to the loading of the sacks, is it not a fact that you made this answer in your former testimony:

"The porters can put more mail in the cars any time than the mail clerk can read and carry about in the car, and ordinarily he will take a sack of mail and get it from the door, if there happens to be one there and pull it off so we can read it out of this pile, because he continues to throw mail on it there, and as a consequence you have to drag it out of that door and read it."

"What were you doing at the time you were injured?"

"I was inspecting a sack of mail preparatory to distributing it about in the car."

Objected to; overruled; exception.

A. I answered it that the porter can put more——

Q. Answer yes or no first.

A. Do you want me to answer if that was my statement?

Q. Is that your answer made on the former trial of this case, just like I read it to you? Did you make that statement?

[fol. 109] A. Well, I am—I don't know whether that is the exact statement or not without seeing the book.

Q. What book?

A. The one that you have in your hand there.

Q. I am showing it to you?

A. Can I look at the book, the whole book?

Q. I will state what it is. It is a transcript of the testimony you gave on the former trial, and I want to call your attention to certain parts of it, and I don't have to show it to you except as a matter of courtesy, but I want to be courteous to you.

A. If you bring something up that I don't know what it is——

Q. (Interposing.) I am just asking you a question and you can answer it yes or no without looking at the book, or you can look at it. Did you make on the former trial that particular statement I have just read to you?

A. I don't know whether I did or not. I did not write that down and I could not say.

Q. Did you make this statement:

"Q. What were you doing at the time you were injured?"

"A. I was inspecting a sack of mail preparatory to distributing it about in the car."

Objected to.

Q. Did you make that statement?

Objected to; overruled; exception.

A. I think I told you that I was inspecting a label of a sack. I did not tell you the exact language you have there in the book.

Q. I will ask you whether or not you answered the questions propounded to you by Mr. Gipson, your attorney, when the other case was tried, if you made these answers to questions that I am going to read:

[fol. 110] "At the time that this mail sack was throwed in at the door that you testified struck your leg and hurt you, was this defendant that was chunking that mail in the car,—what was his movements or demeanor then? Was he chunking it in there slowly and easy, or was he putting it in there fast and hurriedly?

"Putting it in there very hurriedly so as to allow the train to leave, as it was then leaving time and possibly a few minutes later."

A. I will answer that the same as I did the other. You have got a record back there that I don't know anything about. I don't know where it originated from. I am not trying to be evasive, you understand, but I don't know whether it is a correct abstract.

Q. The question is did you make that reply to that question?

A. My answer is I don't know. I don't know anything about that book you have brought in here.

Q. Mr. Denton, the purpose of these questions is—well, never mind, you don't know whether you made them or not?

—. ——.

Q. In regard to that, was it true or not that the porter was, in fact, loading the mail very hurriedly so as to allow the train to leave as it was then leaving time and possibly a few minutes later?

A. That is true; yes, sir.

Q. That is true all right. Now, this question:

"Had the standing time at Jackson, Mississippi, had that been consumed, all of the time you were allowed?"

Answer. "Yes, sir."

[fol. 111] Did you make that statement on the other trial?

A. I think so. I don't know whether I made that statement or not.

Q. That is true?

A. Yes, sir.

Q. "The train was getting out a little late as I understand you?" "Yes, sir."

A. That is correct. I remember testifying to that question on the other trial.

By Mr. Gipson: In order that the jury may have all of it I now ask that the testimony of Mr. Denton on the former trial of this case be put in before the jury in full and made an exhibit to the testimony of Mr. Denton as now given to this jury on this case, in order that the jury may see what questions that he was asked on the former trial and the answers he made thereto, in order that the jury may not be misled about what he testified to on the former trial.

Objected to; overruled; plaintiff excepts.

By Mr. Bozeman:

Q. Now, I will ask you if you did not make this further statement on the former trial in regard to the loading of mail there at the time you were injured. This question

"You say the mail that ordinarily might have moved across at Memphis was brought down to Jackson and sent

across on the train you were on?" And your answer to that was "Yes, sir."

A. I don't know.

Q. Was that done?

A. That is true.

Q. And then this question? "There was an unusual amount of mail on this occasion?"

A. I don't know.

[fol. 112] Q. You mean——

A. I don't know whether I made that answer on the former trial.

Q. Was that true?

A. That was true.

Q. "And therefore, on this occasion the porter for the railroad put on an unusual amount of mail?" "Yes, sir." Did you make that?

A. I don't know whether I did or not.

Q. But that is true, is it?

A. Yes, sir; that is true.

Objected to; overruled; exception.

Q. "And the train had stayed there its full ten minutes?" "Yes, sir."

A. I don't know whether I made that statement or not.

Q. "And it was already late?" "Yes, sir." That is true, was it.

A. The train left Jackson late; yes, sir.

Q. "And there still was more mail on the truck to be loaded in?" "Yes, sir." That is true, is it?

A. I don't know whether I answered it that way or not. I think that is true.

Q. "And the porter was in the process of loading it when you got hurt?" "Yes, sir." That is true? That's a fact whether you were asked that or not?

A. Are you asking me whether that is true or whether I made that statement before?

Q. The last statement I asked you was whether that was true or not in view of the fact that you have given in your answers that you didn't know?

A. What I meant to say is that I don't know whether [fol. 113] that is true—those extracts from the book there of the last trial. I don't know what that book is.

Q. I am not trying or am not asking you to verify this book, as you call it, but am just questioning you as to your knowledge of the things. That is what I want to ask you.

A. All right.

Q. I will ask you if this question was not asked you at the last trial: "And the porter was in the process of loading when you got hurt?" and I will ask you if you did not answer "Yes, sir"? Did you state that?

A. I don't remember that. You kept me on the stand twelve hours before.

Q. That was true, was it?

A. That statement of fact is true; yes, sir. But as to whether that was asked me that way, I don't know.

Q. "The train was late?" "Yes, sir." You have already answered that was true. That is a fact?

A. Yes, sir; that is the fact of the case.

Q. And this question: "So that on this particular occasion the porter was putting mail in much faster than you could take it away?" That is true?

A. Yes, sir.

Q. Now, Mr. Denton, you say that you had lost up to this time in salary you would have received if you had been working all this time something more than $7,000.00. I don't remember the exact amount. You still hold your position as a railway mail clerk with the Government, do you?

A. Do you mean, am I at work?

Q. No; I am asking you if you still hold your position?

[fol. 114] A. Yes, sir.

Q. You have not resigned from your connection with the Government?

A. No, sir.

Q. You are still on the Government list as available mail clerks when you get ready to go to work?

A. When I get able to go to work, if at all.

Q. You say when you get able to go to work. You still hold your seniority, do you?

A. Yes, sir.

Q. What effort, if any, have you made to get the Government to put you to work in some other job where they have light work that could be done in the railway mail service or in the postal service generally.

Objected to; overruled; exception.

A. Do you mean, have I made an effort to have them put me in some lighter job?

Q. Yes?

A. I have made none.

Q. You have made none?

A. No, sir.

Q. What effort have you made to have them transfer you from the railway mail service where you have to stand and handle this other mail to some other service generally in the post office department?

Objected to; overruled; exception.

A. I don't know of any other job in connection with the Post Office Department where they could use a crippled man if there was an opening to transfer.

Q. All right. You know Mr. Steve Webb?

A. Yes, sir.

Q. You heard him testify on the last trial?

A. Yes, sir.

Q. He was your witness, was he?

[fol. 115] A. I think he was a joint witness.

Q. You got him. He was as much your witness as our witness? He was your witness?

A. Yes, sir.

Q. Don't you know that it is a fact, and didn't he testify in this case that he was a railway mail clerk handling this kind of mail, and that he got in bad health and on account of his bad health got them to transfer him to the position of transfer clerk at Jackson where he could have lighter work to do and where he did not have to handle this heavy mail? Don't you know that is one instance where there was an illustration of a man being transferred from heavy work to lighter work, when he wanted it?

Objected to; sustained; exception.

Q. The Government Mail Service is disposed to be very kind in its treatment of employees in the Postal Service is it?

Objected to; overruled; exception.

A. My experience is that they require you to hew to the line very strictly and they do not offer any sympathy.

Q. The postal regulations and their general practice allow and provide for the transferring of those people like you who have taken a civil service examination and have qualified as postal clerks and as mail clerks, providing and authorizing the transfer of such men from one department of the service to another provided the men want it and provided the Government has got a place for him?

Objected to on the ground that if there is such a regulation the regulation itself is the best evidence; overruled; exception.

A. Do you mean if he is able to fill some positions that he might wish to be transferred to at the option of the Government?

[fol. 116] Q. That is what I am asking you, aside from your Government work. You say that you have not gone back to work because you are not physically able to go back to work. Is it not a fact that one reason why you have not gone back to work sooner than this is that you are drawing monthly from the Government a certain per cent of your salary while you are disabled and under a regulation——

Objected to.

Q. Let me ask my question. I did not complete it.

By Mr. Gipson: I ask that the jury retire.

By the Court: Proceed with your question, Mr. Bozeman. I understand you had not completed it.

By Mr. Gipson: Let the record show that we asked the jury to retire and the Court declined to let them go out, and we except.

By Mr. Bozeman:

Q. And under a regulation which was in effect when you entered the service of the Government and which by virtue thereof is and became a part of your contract with the Government?

Objected to; overruled; exception.

By Mr. Gipson: I now insist that the jury be retired that the matter be threshed out.

Overruled; exception.

A. I am not drawing any of my salary from the Government.

By Mr. Bozeman:

Q. I asked you if you are now drawing a certain per cent of your salary?

[fol. 117] A. I am not drawing any of my salary from the Government.

Q. I did not ask you that question?

A. No per cent, then.

Q. Is it a fact that ever since you got hurt, and up to this very day, you are being paid money monthly by the Government of the United States?

A. I am.

Q. Is it a fact that for two years after you were injured, to-wit, from 1927 to April, 1929, that the Government paid you $116.00 a month, aggregating in those two years about $3,100.00?

Objected to as immaterial, irrelevant and highly prejudicial, and moved to exclude; overruled; exception.

Q. Answer the question?

A. I draw that sum from the United States Employees Compensation Commission.

Q. The United States Compensation Commission is a part of the United States Government, is it?

A. Yes, sir; but it is not a part of the Post Office Department.

Q. I will ask you from that time on, from April, 1929, up to now, the Government has been paying you every month $66.65, or approximately that amount?

Objected to; overruled; exception.

A. Yes, sir.

Q. I will ask you if it is not a fact that those payments, under the regulations, will continue as long as you are disabled from going back to work?

Objected to; sustained; exception.

By the Court: Sustained on the ground that Congress can change the law if they see fit.

[fol. 118] Q. You have had business experience and investments in other lines than the Railway Postal Service, have you?

Objected to; overruled; exception.

A. I have had some very negative experience. I have never put a dollar in anything and got the original dollar back.

Q. You were, for a time at least, one of the owners of the D. & W. Hosiery Mills?

A. Yes, sir.

Q. You did have some experience in the manufacture and sale of hosiery?

Objected to; overruled; exception.

Q. That is a fact? You did have some experience in the manufacture and sale of hosiery?

A. Yes, sir; but it was not worth anything to me.

Q. Well, it is a fact that an experience of that kind, where you might lose money, the finding out is, where you can not make it, that this is a very valuable experience, is it not?

Objected to; sustained; exception.

Q. What other business have you ventured into up to this time, Mr. Denton, besides the manufacture and sale of hosiery and the Railway Mail Service?

Objected to; overruled; exception.

A. In 1920 I went back to saw milling.

Q. How long were you in the saw mill business?

Objected to; overruled; exception.

A. About six or eight months.

Q. Were you in partnership with somebody in that?

Objected to; sustained; exception.

[fol. 119] Q. What else besides your saw mill business?

A. Nothing that I recall right now.

Q. You have had some experience in an invention, have you?

Objected to; overruled; exception.

A. No, sir.

Q. Is it a fact that you have recently invented and patented an appliance of some kind through the Patent Office of the United States Government?

A. It is a fact that I have attempted an invention and have applied for a patent, but it has not yet been patented.

Q. What sort of a thing is it?

Objected to; sustained; exception.

Q. Have you or not had other business experience in other lines than that?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Now, with reference to your going back to work. Is it a fact that you have also in addition to the money that you have been receiving from the Government, have you not also been receiving other amounts from other sources during and because of your inability to work?

Objected to; sustained; exception.

By Mr. Bozeman: I might state to your Honor that I submit this is competent as going to the question of the reasons for Mr. Denton not going back to work and his delay. I do not offer it in any way as in diminution of damages, or as a condition or question of liability, but simply as to the question of the date or possible reason that he has not gone back to work earlier.

[fol. 120] Sustained; exception.

Q. I will ask you if it is not a fact that at the time you were injured, and has not been always from your experience and the regulations of the Railway Mail Service Department, that so far as possible a clerk will take mail into the car at stations without viewing or even looking at the label if it is necessary for doing so in order to avoid delay, and if the railroad's representative mis-sends any mail by reason of this practice, report should be made to the Chief Clerk?

Objected to; sustained; exception.

Q. Is it not a fact that this was your instruction as a mail clerk at the time of the injury?

A. I don't know of any such instruction.

Q. You did not let me finish my question. You mean now that you did not have any such instruction as the one I read to you? That is what you meant?

A. Yes, sir; that is what I meant.

Q. I am asking you another question. I will ask you if it is not a fact that your instructions and the other dozens of railway mail clerks at this particular station under such circumstances was this: When the schedule time of a station stop was nearly up railroad employees should be requested to load the balance of the mail as rapidly as possible, separation of the pile to be completed after the train left the station?

Objected to; overruled; exception.

A. I don't know of any such regulation. That was not the practice.

Q. You don't know of any such regulation?

[fol. 121] A. No, sir.

Q. Isn't it a fact that there was also a regulation at that time known to you in your duty, that clerks in charge should organize their crews for the prompt loading and unloading of the mail to and from the train, and if necessary let the mail be taken into the car without taking time to examine the label on the sack, as this could be done later, and that as many clerks as are necessary should assist in taking the mail from the door-way, and in every way possible expedite this work and help keep the train on schedule?

Objected to; overruled; exception.

A. They expected us to cooperate in the handling and the expedition of mails generally. I don't recall that particular regulation, if it happens to be one.

Q. I call your attention to the particular part of it that where it is necessary to keep the train on schedule time it is not necessary to read every label, but that you should expedite it by having the railroad porter to load the mail in the car as rapidly as possible and let the train go and you read the labels and distribute it after the train starts?

A. I don't know of any such practice as that.

Q. Now, there was no reason—no physical reason why that could not have been done on this occasion, was there?

Objected to; overruled; exception.

A. There was no physical reason why it could not have been done.

Q. On this occasion?

A. Do you mean that it was done or could have been done?

Q. Well, which did you understand me to say?

[fol. 122] A. I understand you to say that it could have been done.

Q. Yes, sir; that's what I said?

A. Well, as it was not done I don't know, but I presume possibly it could.

Q. And what means, to make it more definite, knowing the train you were on was already late, and that there was still some mail on the truck to be loaded, I am asking you if it was not entirely practicable for you to have that nigger porter throw that mail rapidly into the car, and then after the train started for you to read the labels and distribute these few sacks that were left to where they should go?

A. Yes, sir; that could have been possible.

Q. Have you not among the documents that you have accumulated in your file any copies of General Order No. 635, or General Order No. 717?

A. No sir.

Q. Has Mr. Gipson got it?

A. We have no General Orders.

Q. I show you here a document from which I have been reading which purports to be a copy of those General Orders and will ask you to inspect them, and after you inspect them to state if they are not the General Orders that were in force with reference to the matter about which I have been asking you?

A. I have been asked to associate these with General Orders that I don't know anything about.

By Mr. Bozeman: I will ask that the stenographer mark that document Exhibit F for Identification.

[fol. 123] (Document handed to the Court Reporter and so marked.)

Objected to; overruled; exception.

Q. Who sent you to Dr. Anderson?

Objected to; overruled; exception.

A. An officer of the United States Employees Compensation Commission carried me to Dr. Anderson and placed me in his charge.

Q. Has the Government paid for all of your medical expenses and doctors' bills?

Objected to; sustained; exception.

Q. That is all.

Redirect examination.

By Mr. Gipson:

Q. Mr. Denton, Mr. Bozeman asked you if did not this sack after he threw in this sack that hit you, if it rolled down off the pile, or how did it come in there and how did it strike you?

A. It was thrown completely over the pile. It did not roll off. It was thrown through.

Q. Mr. Bozeman asked you about your experience loading and unloading mail. Now I will ask you what experience, if any, of your own knowledge had Jim Hunter had as a mail porter? In other words, whether you know that he had been loading mail, and what had been his experience within your knowledge?

A. Jim had been loading there for a number of years.

Q. You know that to be a fact?

A. Yes, sir; I know that to be a fact.

Q. Now, Mr. Bozeman asked you if you would possibly do certain things, and possibly not do certain things. I will ask you whether or not it was possible for Jim Hunter could have placed that sack of mail in the door that hit [fol. 124] you on the leg instead of throwing it in and hitting you on the leg? Did he have to throw it in to hit your leg in order to get it in the car, or could he have laid it in the door?

A. He could have laid it in the door.

By Mr. Gipson: If the Court please, on yesterday we offered in evidence "Instructions and Rules for Transporting of Mails by Railroads," a certified copy of the same, and asked that it be marked Exhibit D to the testimony of Mr. Denton. The Court declined and failed to permit this document to be introduced in evidence as the opposing

counsel objected to it among other grounds that it would encumber the record. We had it marked for the purpose of identification.

The plaintiff now desires, with the Court's permission, to withdraw said document from the record, and do we now have the permission of the Court to do that?

By the Court: Yes, sir.

By Mr. Gipson: Let the record show that to be the case.

Now, we offer in evidence Section 18 as shown on page 8 of the Instructions and Rules for the Transportation of Mails by the Railroads; and Section 26 as shown on page 11 of the same document, and ask that the document, together with the certificate of same, the same being a certified copy, certified to by the Post Master General of the United States of America, and ask that the same be marked and identified as the proper exhibit to the witness's testimony (Exhibit D—Denton).

[fol. 125] By Mr. Bozeman: The defendant objects to Section 18 on page 8 offered by the plaintiff because the said section applies exclusively to the handling, loading and unloading of storage mail, and because the loading of storage mail is in no way involved in this case, and the section is therefore incompetent and immaterial, and does not tend, in any way to prove any of the issues in the case.

Overruled; exception.

By Mr. Bozeman: Defendants object to the introduction of Section 26 on page 11, because the same is immaterial and irrelevant, and does not tend in any way to establish any of the issues in the case.

Sustained; exception.

By Mr. Gipson: We ask the stenographer mark the certified copy of this document, and let him mark it so as to show that Section 18, as shown on page 8 of said document, is admitted in evidence.

Document handed to the Court Reporter, marked "Exhibit D—Denton. Section 18 admitted in evidence," the same being in the words and figures as follows, to-wit:

"18. Handling, Loading and Unloading of Storage Mails. (a) Railroad Companies are required to handle, load and unload storage mail carried in baggage and storage cars and in baggage end of compartment cars.

"(b) Railroad companies are required to transfer all mail between cars in the same train where such transfers are necessary and required by the postal officials.

"(c) Where a storage car is operated next to the full or apartment car and railway postal clerks have access thereto through end doors, the handling of mails at intermediate [fol. 126] points where the volume is small may be performed by the clerks when considered advisable by the department.

"(d) Where a unit of storage space is carried in an over size railway post office car, the mails carried in such unit shall be loaded and unloaded at terminals by the railway postal clerks.

"(e) Railroad companies may be required to transfer excess mails carried in the baggage car to available space in the authorized distributing or storage unit, at points where such transfer is practicable, upon presentation of request for such transfer on Form 5050 by a representative of the department. However, if the company desires to carry such mails through to destination in the baggage car in lieu of making the actual transfer, it may do so with the understanding that the space in the baggage car occupied thereby will be charged against the available space in the authorized distributing or storage unit. The request form shall show the point at which the transfer is to be made and the number of sacks to be transferred and shall be delivered to the railroad representative immediately upon the arrival at the station where the transfer is ordered. Railway Postal Clerks will not be required to accept the transfer of such mails through end doors when train is in motion, but they may do so during the station stop if the storage end of the distributing car is next to the baggage car."

Q. Mr. Denton, you read this yesterday. I will ask you if that is Section 1530 of the Postal Laws and Regulations?
A. Yes, sir.
Q. A certified copy of the same?
A. Yes, sir.

[fol. 127] Q. I will ask you to read that or glance over it—you read it yesterday—and I want to question you about it. Under this section I have just handed you for exami-

nation what would be your duty as a postal clerk in having or in disputing—a dispute between yourself and a railroad employee?

Objected to as repetition; sustained; exception.

By Mr. Gipson: I now offer regulation Section 1530 in evidence again and respectfully request the Court to permit it to be marked for identification and go to the jury as Exhibit B to the testimony of this witness.

Objected to; sustained; exception.

Q. Under that regulation that I just showed to you, what would be your duty if a dispute arose between you and Jim Hunter as to whether certain mail went into a car or did not go into a car, or anything in regard to the handling of mail? What would be your recourse?

Objected to; sustained; exception.

By Mr. Gipson: Now comes the plaintiff and moves the Court to strike out all of the evidence pertaining to any compensation received by the plaintiff, Jesse H. Denton, from the United States Employees Compensation Commission, Washington, D. C., and instruct the jury to ignore that.

Overruled; exception.

Q. Now, in the event that you win this suit and secure a verdict at the hands of this jury, what is the first thing that you must pay out of the recovery in this law suit?

A. I must return the money that has been advanced to me by the Compensation Commission to them.

[fol. 128] Q. Then, Mr. Denton, whatever you recover here, every cent the United States Compensation Commission has advanced you during your disability, as well as any amount that they have paid out for your hospital treatment and doctor's bills, must be paid by you out of the recovery back to the United States Employees' Compensation Commission? That is true, is it?

A. Yes, sir.

Q. I will ask you, Mr. Denton, if your attorney in this case is representing you through the joint consent or permission or agreement with the United States Compensation Commission, of Washington, D. C., and with yourself, and

that it is understood between you and your attorney and the United States Employees' Compensation Commission, of Washington, D. C., that regardless of the amount recovered here, that if you recover enough for your part, above your attorney's fees to compensate them or to repay them for the amount they have paid you during your disability, you have got to repay them in full?

A. I have. My understanding is it is simply a loan against the claim.

Objected to the last part of the answer wherein he says his understanding. Also moved to exclude his previous testimony about what he would have to do in the way of reimbursing this money if he wins this lawsuit, because of the fact that all of that is fixed by statutes of the United States, and the statute is the best evidence of what would happen.

It is objected to because it is not the best evidence, and the best evidence being "An Act to provide compensation for Employees of the United States suffering injuries while in the performance of their duties, and for other purposes."

[fol. 129] By the Court: It is all competent except where he says "It was his understanding that it was in the nature of a loan." I will strike that part out.

Exception.

By Mr. Gipson:

Q. Were you directed by the United States Employees Compensation Commission, of Washington, D. C., to institute this suit for damages?

A. I was.

Q. Do you know what amount you have drawn up to now from the United States Employees Compensation Commission—what is the total amount that you have drawn up till now?

A. I don't know what the exact figures are; no.

Q. I believe when we tried this case before it was $3,150.00?

A. I can tell you approximately.

Q. All right. Take the figures as quoted you by Mr. Bozeman as correct, and I believe you said you thought they were correct, add what you have drawn since that time, and try to give us that figure?

A. I have drawn somewhere close to $900.00. So that, that with the $3100.00 would be approximately $4,000.00, and a few dollars.

Q. Approximately $4,000.00, or perhaps $4050.00 you have drawn?

A. Yes, sir.

Q. And I understand that is the amount that you will have to reimburse the Compensation Commission?

A. Yes, sir.

[fol. 130] Q. Do they require the physician employed by them to diagnose your case and report on your physical condition?

A. They require their physician to examine me and report to them from time to time.

Q. Is that the reason you went to Dr. Anderson, because one of their officials took you to him?

A. Yes, sir.

Q. Mr. Bozeman discussed the money you have drawed and asked you about that. Have you used that money or have you got it that you have been drawing along by the month?

Objected to; sustained; exception.

Q. Before you were injured, as you have alleged in your declaration, was there anything wrong with your knee and leg you here complain of?

A. No, sir.

Q. Both of your knees and your legs were in good shape before that time?

A. Yes, sir.

Q. That is all.

Recross-examination.

By Mr. Bozeman:

Q. Now, you say that you have now received from the Government up to this time about $4,000.00, and that if you win this suit you will be under obligations to refund that amount?

A. I believe my testimony was if I recovered a sufficient amount to return it.

Q. Well, if you recover a sufficient amount you will have to return it?

A. Yes, sir.

Q. If you do, not recover anything in this suit; if in the event—if it is eventually decided in this case that you are not entitled to anything, then you don't have to pay back a [fol. 131] dollar of that money, do you?

By Mr. Gipson: We object to this line of questioning as being highly prejudicial, and being an effort to get the benefit indirectly of what he can not get the benefit of directly, and the question as to whether he is to pay the money back if he wins this law suit does not concern the Illinois Central Railroad Company, Jim Hunter, or the Mississippi Valley—the Yazoo & Mississippi Valley Railroad Company, and I respectfully request that the jury retire at this stage of the game.

Overruled; exception.

By Mr. Gipson: I now request that the jury retire in order to make this record.

By the Court: He has him on cross-examination.

By Mr. Gipson: I respectfully request that the jury retire before the question is answered.

I want the record to show that I respectfully requested the Court several times that the jury retire as I want to make a certain record, and the Court declined to do it in each and every instance. I now ask the Court—that the Court tell me so what I have to say, that I will have a witness on it in the presence of the jury.

By the Court: I rule that the testimony is competent to go to the jury. That is all I can do. I don't know what you want to say.

[fol. 132] By Mr. Bozeman:

Q. Answer the question?

By Mr. Gipson: I want to object further. I want to say this for the benefit of the record, that regardless of what the answer is, it is calculated to give to the Railroad Company the benefits of the payments made to this man by the United States Government. In other words it just goes to say to the jury, "Now, this gentleman has done got $4,000.00 standing against him, and he does not have to pay the $4,000.00 back again," and I submit that the jury should be permitted to retire while I get into the record what I want in, in order to have my record complete.

By the Court: The jury will understand that the $4,000.00 has got nothing to do with the liability or the amount of damages the jury might find. I don't know what answer Mr. Denton is going to make at all, but I rule that he can answer the question as he sees fit, and that it is a legal question.

Exception.

Q. Read the question, if you please.

Question read as follows:

Q. "If you do not recover anything in this suit; if in the event—if it is eventually decided in this case that you are not entitled to anything, then you don't have to give back a dollar of that money, do you?"

A. That is my understanding; yes, sir.

Q. That you would not have to pay back any of it if you do not recover anything from the railroad?

By the Court:

Q. As a matter of fact, if you don't recover, then you don't have to pay back?

A. That is my understanding, is that I will not.

[fol. 133] By Mr. Gipson: I now move to strike the answer because that is the opinion of the witness, and he is asking a layman his opinion on an Act of Congress of the United States, and he is in no event a lawyer.

A. I do not want to be evasive or anything, but that is a regulation, and anything that I can tell you about it would be simply the way I understand it.

By Mr. Bozeman: If that is the law you are guessing at it?

A. Yes, sir.

By Mr. Gipson: Now comes the plaintiff and moves the Court to strike this answer of the witness because it is the opinion of a layman on a law passed by the Congress of the United States, and the law itself is available and laying on the table between the lawyers now, and the question asked by the law and the question asked by the Court on the Bench concerns a question of law of the United States.

By Mr. Bozeman: I asked him as a matter of fact if he knew.

By Mr. Gipson: And then he gave his opinion. I wanted the law introduced awhile ago, and I submit that it is competent, and will give it to you now if you want it.

By the Court: I will give the jury the law in the instructions when the time comes for that.

By Mr. Bozeman:

Q. Now, just one other matter. You testified on re-
[fol. 134] direct examination awhile ago about how that sack was thrown in; that it was thrown completely over the pile of mail in the door. You still state that to be true?

A. Yes, sir.

Q. That is a fact?

A. Yes, sir.

Q. It was not thrown on top of the pile of mail and slid on down, but thrown clear over the other pile of mail?

A. I think I told you I was not sure whether it did or did not.

Q. If it did carry the other sack with it, it was bound to have hit the top of the pile, or a part of the pile, in order to carry the sack with it?

A. It was bound to have lost some of its force if it knocked down the sack.

Q. When you state to the jury that it was thrown clear over the pile, you did not mean to state to them that it was thrown—that it did not touch the pile of mail in the door at all - *M*

A. Well, here is what I mean to say. It was not properly laid on top of the pile of mail in the door. That it was thrown in there with sufficient force. That it never stopped in its normal position. It came clear over in the aisle of the car where I was standing and struck me on the leg.

Q. You testified on the other trial that you thought that some of the other sacks of mail did turn over in the aisle when this sack was thrown in, did you?

A. I don't know whether I testified that way or not.

[fol. 135] Q. But that is a fact, isn't it? It is a fact that you now say that part of the other sacks of mail that had already been piled in the door did turn over in the aisle when this sack came in that hit you on the leg? That's your best recollection, isn't it?

A. I just told you that I didn't know whether it did or did not.

Q. You don't deny that it happened?

A. No, I don't deny that.

Q. But whether you made this statement that I read to you, you don't recollect?

A. No; I don't swear to that.

Q. That is all.

(Witness excused.)

[fol. 136] J. M. Combs, called as a witness on behalf of the plaintiff, was sworn and testified as follows:

Direct examination.

By Mr. Gipson:

Q. This is Mr. J. M. Combs?

A. Yes, sir.

Q. Mr. Combs, are you connected with the Railway Mail Service of the United States Government?

A. Yes, sir.

Q. In what capacity?

A. Chief Clerk, located at this point.

Q. Where is your office located, please?

A. The third floor of the Post office Building.

Q. Meridian, Mississippi.

A. Yes, sir.

Q. How long have you been chief clerk?

A. About fourteen years.

Q. Mr. Jesse H. Denton, according to the testimony, has been a railway clerk for about thirteen years? What division is he employed in? Your division or some other division?

A. He is in this division the most of the time.

Q. Do you know Mr. Denton personally?

A. Yes, sir.

Q. Up to April 21, 1927, the time it is alleged that Mr. Denton got his leg hurt at Jackson, Mississippi, was Mr. Denton performing the duties of railway clerk under you?

A. Yes, sir.

[fol. 137] Q. Was he of normal strength and ability to work reasonably regular up to that time?

A. Yes, sir.

Q. I will ask you if you have a record or know anything about a train wrecking near Quebec, Louisiana, on Thanksgiving, 1926, at a time when Mr. Denton was one of the railway mail clerks on duty and when Mr. Denton received an injury?

A. Yes, sir; I have that record.

Q. What does your record show that Mr. Denton's injuries received in that wreck was?

Objected to; sustained; exception.

Q. Was that record made at the time and filed?

A. Yes, sir; within a few days.

Q. You mean, say, a week?

A. Yes, sir.

Q. And it was made and filed prior to the 21st of April, 1927?

A. Yes, sir.

Q. How many trips did Mr. Denton lose on the road—how many trips did he lose from the injury he received in the wreck at Quebec? How many trips?

A. He was off six days on account of those injuries. That would involve two trips.

Q. Well, from that time, which was in the Fall of 1926, up to the time that Mr. Denton is supposed to have been injured at Jackson, Mississippi, in April, 1927, did Mr. Denton perform his regular duties as a railway postal clerk satisfactorily?

A. Yes, sir.

[fol. 138] Q. Mr. Combs, before you became Chief Clerk of the Railway Mail Service did you ever have occasion yo be a railway postal clerk running on the road?

A. Yes, sir; I was on the road about eight years—nine years.

Q. As the Chief Clerk under whom Mr. Denton worked, will you please tell us where the proper place—the location—the proper place and location is for a second clerk in a car at Jackson, Mississippi, on Train 303 when receiving mail into a car at Jackson, Mississippi, on Train 203 when

receiving mail into the car from a truck on the platform where the porter is placing the mail in the door of the car?

Objected to as a mere expression of opinion and is therefore incompetent, and it is a question for the jury.

Overruled; exception.

A. He should have been standing at a point in the car away from the door where he could reach out when the porter hands the mail up in through the door—passed it in through the door, so that he could take hold of it and place it where it was due to be placed, which would be about three feet back from the outside of the door.

By Mr. Bozeman: I move to exclude the answer of the witness as being a mere expression of opinion, and being incompetent, and being a question to be determined by the jury on the particular facts in the case.

Overruled; exception.

[fol. 139] Q. Mr. Combs, Mr. Ike Worthington was clerk in charge in April, 1927?

A. Yes, sir.

Q. Where is Mr. Worthington now?

A. He is dead.

Q. How long has he been dead, approximately?

A. He died the 21st day of March, this year.

Q. If Mr. Worthington was in charge—if Mr. Worthington and Mr. Jesse H. Denton were running together on the 21st day of April, 1927, on Train 203, going west at Jackson, Mississippi, under your rules and regulations of your department, what authority, if any, did Jesse H. Denton have to supervise the porters placing the mails from trucks on the run-way at the depot at Jackson, Mississippi, into the door of the car constituting the railway post-office?

By Mr. Bozeman: We object to that as incompetent, and because the matter is controlled by one of the postal laws and regulations then and now in force, being Section 1293, which itself fixes the duties and liability under the circumstances. That is the best evidence and controlls the matter. Therefore, the testimony of the witness would be incompetent.

Overruled; exception.

By Mr. Gipson:

Q. Go ahead?

A. No, sir; he had no authority to supervise the movements of this porter.

Q. Mr. Combs, in the event that the porter did not do to suit him, or did not do what he felt like he ought to do,—done something that he ought not to do, or said something, [fol. 140] what was Mr. Denton's remedy and way to reach him, and what was the only way to reach him?

A. It was to report him to the railroad company, and report through regular channels, for them to handle the case.

Q. What route did that regular channel take?

A. He would make a report to our office—the chief clerk's office.

Q. That is Mr. Denton's superior?

A. Yes, sir.

Q. And then what would your office do with Mr. Denton's report showing that the railroad employee was not doing what he should do? What would you do with that report?

A. I would take it up with the Railroad Company.

Q. With a view of having them do what?

A. Well, to penalize the man or do whatever they wanted or saw fit to do in the premises.

Q. Would Mr. Denton have any authority to say what the penalty would be, or what they would do with the employee?

A. No, sir.

Q. Would the Chief Clerk of the Railway Mail Service have authority to tell them what to do with the man?

A. No, sir.

Q. Now the testimony shows that a part of the train No. 203, in which Mr. Denton claims to have been at the time he was hurt, consisted of a Railway Post-Office. Now, does the Yazoo and Mississippi Valley Railroad Company's Train 203, running from Meridian, Mississippi, through Jackson, Mississippi, west, carry the mail regularly?

[fol. 141] A. Yes, sir; daily.

Q. Does it carry a Railway Post Office daily?

A. Yes, sir.

Q. Is there a railway mail clerk working in those railway post-offices daily?

A. Yes, sir.

Q. Is that carried under a contract between the Post Office Department and the Railroad Company?

A. Yes, sir.

Q. There has been some testimony here about some extra space being used, or took or rented on the day Mr. Denton is supposed to have been hurt in Jackson, Mississippi, on account of some extra mail. When that extra space is used does the Railroad Company get extra pay for it?

A. Yes, sir.

Objected to.

Q. Now, Mr. Combs, does the pay the Railroad Company receives for carrying the United States mail and the railway post offices as a part of their train include pay or compensation for the transportation of the railway postal clerks in the railway post offices, or not?

Objected to as incompetent, irrelevant and immaterial, and is controlled by printed written regulations and contract, which is the best evidence.

Overruled; exception.

Q. Go ahead?

A. Yes, sir; that includes the transportation of the clerks on duty.

Q. Then, Mr. Combs, when Mr. Denton, on the day that he is alleged to have been injured, did he or not have a right on the train and on the car in the railway post office [fol. 142] at the time that he is alleged to have got injured?

A. Yes, sir; he was ordered to make that trip.

Q. Ordered to do that by who?

A. By our office. By his superior officers.

Q. Then he made the trip to fulfil the orders he received from his superior officers in his department?

A. Yes, sir.

Q. Mr. Combs, has your department an age limit at which railway clerks, or postal clerks, can retire from the service?

A. Yes, sir.

Q. What age is that, if you please?

A. Sixty-two years, with thirty years of service.

Objected to as incompetent, irrelevant, and immaterial; overruled; exception.

Q. Mr. Combs, I believe you say that they can retire at sixty-two years?

A. Yes, sir.

Q. That is correct, is it?

A. Yes, sir.

Q. When they have reached the ahe of sixty-two, even though they have had thirty years service in the mail service, if they are physically fit and make application, is it possible for them to extend that time so that they may still be in the service?

A. Yes, sir; they can get two years extension. A term of two years—in terms of two years at a time, two extensions.

Q. That makes a total possible time of sixty-six years of age of a mail clerk?

A. Yes, sir.

[fol. 143] Q. When they retire at the age of sixty-two, or at the age of over sixty-two, if permitted to run longer, what part of the pay do they receive at the time they retire? Do they continue to receive?

A. They are paid a flat rate of $100.00 a month.

Q. For how long, Mr. Combs?

A. As long as they live.

Q. For life?

A. Yes, sir.

Q. Then, if Mr. Denton was injured in April before he was 29 years old, if he had stayed physically fit, it is possible for him to have worked at his position for thirty-three years?

A. Yes, sir.

Q. And then if he was found physically fit, it would have been possible to have got that extended two years two different times, which would give him possibly four years longer?

A. Yes, sir.

Q. Which would mean thirty additional years for him to work as a railway mail clerk, and at that time if he had been retired and be making the same scale of pay he was making when he was injured, and he would draw, I believe you said $100.00 a month as long as he lived?

A. Yes, sir.

Q. As a retired employee?

A. Yes, sir.

Cross-examination.

By Mr. Bozeman:

Q. The same regulations which you have been just testifying about including this pension of $100.00 as long as a man lives applies also to employees in other branches of [fol. 144] the Goverment service—the postal service other than the Railway Mail Service?

A. Yes, sir.

Q. It applies to employees of the local post office here in Meridian?

A. Yes, sir.

Q. Mr. Will Johnson who dies recently, had been drawing that $100.00 per month for years, had he?

A. The law has been changed recently. He had been drawing $1000.00 a year, $83.33 a month.

Q. So that this right to work for the Government and at the end of a certain period of years get $100.00 per month, is not exclusively applied to the Railway Mail Service?

A. No, sir.

Q. Now, suppose that Mr. Denton here would contend that he was not able to handle heavy mail like this sack of mail lying before the jury here, or anything of that kind, and wanted to be transferred to some lighter job in the service—in the railway mail service or the local post office service, or transfer clerk, or something like that, how would he go about it?

Objected to; overruled; exception.

A. He could transfer to any vacancy in one of these lighter positions if there were any vacancies in one of them, or he could make a mutual transfer with somebody in one of these lighter positions.

Q. For instance, if a man working in a transfer job, or a light job, and wanted to go on a railway mail car, and Mr. Denton wanted a light job, they could swap jobs?

A. Yes, sir.

[fol. 145] Q. You, as chief clerk, and the government authorities are always ready to help do what you can for a man or men, to transfer them from one job to another?

Objected to; overruled; exception.

A. Yes, sir; we always give consideration to a request that is made by a clerk for a transfer.

Q. Now, Mr. Combs, you have testified to certain duties of a clerk. Now, if the Government regulations—Postal regulations printed about any particular matter, and your idea or statement about what should be done would conflict with the regulations, the regulation itself would control it, would it?

A. Yes, sir.

Q. In other words, you have no right as Chief Clerk to vary the postal regulations?

A. Yes, sir.

Q. Now, with reference to the porters handling mail in the post office, I show you a certified copy of Regulation No. 1293, which reads this way:

"Railroad Company shall furnish the men necessary to handle the mail, to load them into and receive them from the door of the railway post office car, and to load and pile mail into and unload them from storage and baggage cars under the direction of the transfer clerk or the clerk in charge of the car, if one is on duty."

Now the transfer clerk means the transfer mail clerk?

Objected to; overruled; exception.

Q. The transfer clerk, or the clerk in charge of the car, he is a government employee?

A. Yes, sir; transfer clerk; yes, sir.

[fol. 146] Q. Both the transfer clerk and the clerk in charge of the car are government employees?

A. Yes, sir.

Q. Well, now, you were not over there, of course, Mr. Combs, at the time of the accident?

A. No, sir.

Q. You was not present when Mr. Denton was hurt?

A. No, sir; not at that hour.

Q. You don't know, of your own knowledge, just what conditions existed there in the way of loading the mail at the time the sack struck Mr. Denton?

A. *Mo*, sir; I was not there.

Q. You don't know how much mail was piled in the door?

A. No, sir.

Q. You don't know what kind of mail had to be put in?

A. No, sir.

Q. And where Mr. Denton would stand in receiving that mail and put it up would necessarily depend on the kind and quantity and size of the mail that was being loaded, would it?

A. Yes, sir.

Q. In other words, if they loaded small pouches of mail he would stand close to the door way? That is where he would necessarily have to be?

A. Well, they are all the same. There would not have been any difference. There is only a few inches in the length of them.

Q. You don't mean to tell the jury that there is a certain spot in the car where the law requires Mr. Denton to stand and receive the mail?

A. No, sir.

[fol. 147] Q. Denton was to receive this mail into the car, and was under the duty, when loaded into the car by the porter, to receive it as expeditiously as he reasonably could, all this mail of various kinds, and to place it in the various parts *parts* of the car assigned for such mail?

A. Yes, sir.

Q. He would pick up one pouch of mail and find out that it went to the rear—to the back part of the car, and he would take that and carry it back and put it in the pile, and then he would come back to the door and get another part of the mail, and if he found that had to go to the forward part, he would take that and carry it and put it over in the space it belonged?

A. Yes, sir.

Q. That kept Mr. Denton continually moving from the door to one end and from the door to the other and back and forth, did it? He did not have a stationary position and just stand there while the mail was being loaded?

A. No, sir.

Q. He had to move about according to his duties there?

A. Yes, sir.

Q. So he would be at one place one moment and in another place in another moment?

A. Yes, sir.

Q. Now, therefore, when you tell this jury where it was Mr. Denton's place to be, you did not mean to say it was in any one particular spot, but his duty was to be near the door where he could conveniently get hold of the mail and put it there?

[fol. 148] A. I maintain, Mr. Bozeman, that about three feet from the door where he could reach the mail when it is passed in the door was the place for him to stand to receive the mail.

Q. About three feet from the door?

A. Yes, sir.

Q. That would depend, as you have already testified, on the quantity of mail, the kind of mail, and the like?

A. I said about three feet.

Q. It would vary according to conditions?

A. Yes, sir.

Q. Do you recall when you first heard about Mr. Denton being injured, Mr. Combs?

A. It was just a few days after. I don't remember how long.

Q. I want to ask you with reference to some regulations here about loading mail. For instance, General Order No. 37, Section 4 makes the provision: "In so far as possible clerks will take mail into the car——

Objected to.

Q. I will put it this way, if Mr. Gipson wants me to do it. I am reading to you what purports to be General Order No. 37 by Superintendent of the Railway Mail Service, New Orleans, Louisiana, dated December 5, 1928, Section 4: "In so far as possible clerks will take mail into the car at local stations without viewing every sack label if this need be done in order to avoid delay, and if the railroad representative missed any mail by reason of this practice, prompt report should be made to the chief clerk."

Aside from the date of this regulation and the issuance of this General Order that was the practicable and proper [fol. 149] method of doing things where a train was delayed, was it not?

Objected to.

Q. I will make it apply to Jackson, Mississippi, to suit Mr. Gipson. Aside from the promulgation of this General

Order that I read you, I will ask you if it was not the proper and practical thing to do in order that the train schedule might be maintained and in order that the mails might be properly and promptly transmitted over the railroad that in order to avoid delay that it would be proper for the clerk not to try to read every label and every sack as it came in, but to just take the mail rapidly in as it is put in there, and after the train starts to read the labels and place the sacks?

A. The places where we handle large volumes of mail like we do at Jackson—you understand, I judge, from what you have already said—you understand very well—very thoroughly about how mail has to be placed about in different parts of the car. We would have bins over in this end, the forward end of the car where we have Shreveport connections, and in this one we would put the Monroe connections, and in this one another connection, and when you would get the car half full or three-quarters full, and would have 100 more sacks to load in there, if you would try to put that much mail in there without reading the labels, you would just pie the whole thing, and mail would be carried past. In order to place the mail properly and to protect the interest of the service, and to maintain the service, you place the Jackson mail as it comes in the car in the place it is [fol. 150] supposed to be in. If that is not done the service will suffer. It is the practice of the Railway postal clerks to pile that mail as it comes in, and read the labels and put it where it ought to go.

Q. That is the most expeditious way to do it?

A. Yes, sir.

Q. The regulation — when you carry a pouch by a station to send it back by the next train, is it?

A. Yes, sir; that's what they do with it when they do that. I don't know that the regulations require it, but the regulations require that the mail be properly distributed.

Q. I will ask you whether or not the regulation at the time that Mr. Denton was hurt in April, 1927, in your jurisdiction, is like the one I read to you there?

Objected to; overruled; exception.

A. That idea has always been current, that whenever by piling a few sacks in the car rapidly can let a train go out; that is the practice to do that.

Q. That is all.

(Witness excused.)

[fol. 151] Dr. W. Jeff Anderson, called as a witness on behalf of the plaintiff, was sworn and testified as follows:

Direct examination.

By Mr. Gipson:

Q. This is Dr. W. Jeff Anderson?

A. Yes, sir.

Q. Are you a graduate of a recognized school of medicine?

A. Yes, sir.

Q. What college?

A. Tulane, New Orleans.

Q. How long have you been engaged in the practice of medicine?

A. Twenty-eight years.

Q. Are you the Doctor Jeff Anderson that operates an infirmary in the City of Meridian?

A. Yes, sir.

Q. Do you maintain an office in the City of Meridian, Mississippi?

A. Yes, sir.

Q. Do you do a general practice as well as surgery?

A. I do surgery and a general practice.

Q. Do you specialize in surgery?

A. Yes, sir.

Q. Do you do a general practice?

A. Yes, sir; some general practice.

Q. Before you did specialize in surgery you did a general practice?

A. Yes, sir.

Q. Have you had occasion to examine and treat one Jesse H. Denton, a railway postal clerk, for injuries in his leg?

[fol. 152] A. Yes, sir.

Q. Do you recall the morning that a gentleman came with him and when was the first time that this patient came to see you?

A. It was either the—I don't think that it was the first time that he came to see me. He was sent to me through the Compensation Commission—referred to me for treatment, but I don't remember whether one of the men came with him at that time or not. But there was one came.

Q. Do you remember a Mr. Henderson, traveling representative of the United States Employees Compensation Commission coming to you about him?

A. Yes, sir.

Q. Did you treat Mr. Denton at the request of the said Commission?

A. I treated him at the request of the Compensation Commission.

Q. That's what I am speaking about?

A. Yes, sir.

Q. Doctor, when you examined Mr. Denton, do you recall about what time that was, or about when it was when you saw him the first time?

A. I think that was in February of 1928, as well as I can recall, without looking on my record.

Q. What condition did you find his leg in when you examined him?

A. I found a scar over the patella, and the ligament attached from the patella to the tibia—where the ligament is inserted into the tibia, was about two inches long there, and at that time it was draining a little bit and broken down, ulcerated.

Q. You say it was draining?

[fol. 153] A. Discharging a little fluid, pus, from the ulcerated condition.

Q. Was it sore and tender?

A. Yes, sir; it was sensitive, and I had to keep a dressing on it at that time.

Q. Doctor, during the time that you were treating him for this leg, did that infection spread to his person or not?

A. It developed into glandular abscesses, two of them. One just about, or just about the clavicle on the right side and the other on the top of the hop, I believe on the right side. I can't remember just now, but it was one side or the other.

Q. Were they troublesome to heal?

A. They were very slow about healing. Those infected glands usually drain quite a good while before they heal.

Q. Did you ever open them with a knife?

A. Yes, sir.

Q. In your judgment about how long did it take to heal the leg sore after he came to you?

A. Well, it was, as well as I can remember now, possibly a couple or three months before he could go without having a dressing on it after I began to treat him.

Q. What is your best judgment about what length of time that it took those sores that came on him to heal?

A. As well as I can remember about possibly two or three months before they healed up.

Q. From your experience as a physician and surgeon what would you say was the cause of those sores, one by the collar bone and one on the side of the hop?

A. The only conclusion that I could arrive at was that there was an infection that he picked up from this glandulatory ulcer, this sore on the shin. I had culicules made from this pus and there was nothing that we could find from the [fol. 154] laboratory tests made. The only thing that we could arrive at was that it was a posterior infection or a breaking down of the glands from picking up some poison somewhere.

Q. Doctor, were you required to make, by the United States Compensation Commission, to make reports to them showing Mr. Denton's condition?

A. Yes, sir.

Q. And you understood and knew that they received and accepted your reports and based his disability on your reports?

A. Yes, sir.

Q. You are not related by blood or marriage to Mr. Denton, are you?

A. Not a bit; no, sir.

Q. Did you ever do any of his practice before he was referred to you by the Government?

A. I had practiced some for him. I had done some practice for him and his family. In fact, all of the family, for many years.

Q. You would not have attended him in this case unless the Government had referred him to you?

A. No, sir; I had not seen him.

Q. I will ask you how the location of what is commonly called the knee cap of Mr. Denton on the leg that was injured,—I will ask you about the location of that k-ee*n* cap with reference to whether it is higher, lower, or to one side?

A. Well, from the X-ray picture it appears to be a little higher than normal, than the normal k-ee*n* cap.

Q. Now, what do you attribute that to, to it being higher?

[fol. 155] A. I attribute that to the damage done to the ligaments that attach and hold the patella down to the tibia in front.

Q. That is the attachment that holds the knee cap, as it is commonly called, into position?

A. Yes, sir.

Q. Did you find by examination that his leg had been operated upon and that attachment had been split open?

A. Yes, sir.

Q. Underneath that attachment that was split open, did you find that some of the bone had been removed from the leg?

A. Yes, sir.

Q. Did you mark that X-Ray picture so that you would know it if you would ever see it again?

A. Yes, sir.

Q. Look at this picture and see if that is the X-Ray picture you took of Mr. Denton's leg?

A. Yes, sir.

Q. Where were you at when you took that X-Ray picture?

A. Up at my infirmary.

Q. You took that with your machine that you are familiar with?

A. Yes, sir.

Q. That machine does standard work, does it?

A. Yes, sir.

Q. What defects or injury to the bone of the leg does that X-Ray picture show, Doctor?

A. It shows a portion of the process of the tibia is partially gone where this ligament runs into the patella—runs from the patella down here and attached down here. This shows to have been curretted here on this portion of the bone.

[fol. 156] Q. What size is that hole in that bone there? How long is it up and down, if you know?

A. Six inches and a half.

Q. How deep is it in the bone from the outside surface coming in to the hollow of the bone?

A. It is about 5/8 inch.

Q. A man thirty-one years old at this time, with a hole in the bone of his leg like that, tell the jury there whether or not that is a permanent injury or a temporary injury?

A. It is a permanent injury.

Q. With his knee cap located as it is there according to the X-Ray picture, as you say located higher, tell the jury whether or not that is a permanent injury or a temporary injury? In your judgment?

A. That is not an injury, but simply a deformation. It has been pulled up from the looseness of this ligament. That causes the muscle to pull it up. That is not an injury there. This is the injury down here, and it is stretched from the damage done to Mr. Denton here. The muscle pulling up on it has pulled the knee cap up slightly.

Q. In your judgment will that knee cap ever come back into place?

A. No, sir.

Q. Dr. Anderson, Mr. Denton has exhibited his limbs or legs to the jury here naked, and has been his knee showing the jury the grating or grinding noise in his knee when he bends it, as well as to permit them to place their hands on it and feel the grating temporarily. What in your judgment as a physician, with your experience, would you tell the jury, was that noise, the grating in his leg, when he bends his leg?

[fol. 157] A. Well, that is a roughness in there, in the joint caused from inflammation. An injury could cause that. A slap or a blow in the joint to a certain extent would cause it.

Q. Well, would he get a lameness from losing the oil out of the knee joint?

A. Yes, sir; we have that very often following a rheumatic condition. Arthritis it is called.

Q. Is that a temporary or a permanent condition, in your judgment?

A. Well, I would say that might be a temporary condition and it might be a permanent condition. It might be something that nature could restore.

Q. This injury took place in April, 1927, and this is June, 1930, being three years and approximately two months, and the grating and grinding in his knee when he bends it is still there, would you say that would be in favor of a recovery or would be in favor of determining that it was a permanent injury?

A. I would say that it looked to me like it was possibly going to be a permanent symptom. Now, that grating there is just simply a noise, and it does not necessarily mean that there is any disturbance there of any of the functions, especially of the joint. That is just a noise you hear, and that results from this injury, I know, but it has not possibly anything to do with the function of the joint.

Q. Doctor, how long has it been since you saw this leg or examined Mr. Denton?

A. It has been, I think, maybe a couple of months, or something like that. As well as I remember he came up to my office to see me maybe a couple of months ago, something like that.

[fol. 158] Q. Doctor, over that period of time, have you examined, treated and viewed Mr. Denton's injury?

A. He has been under my observation ever since the Compensation Commission turned him over to me in February, I believe it was, in 1928.

Q. More than two years?

A. Yes, sir; I believe that is the date.

Q. Has Mr. Denton got sufficient ligaments in his leg and sufficient strength in his leg to use it in this manner, going up and down on it like that,—just that leg, in your judgment?

A. No, sir; I don't think he has.

Q. In your judgment, from the history of this case, what have you to say as to whether or not he ever would be able to use it in that way?

A. I don't think that he ever will be better off than he is now. He has got a permanent injury there that is going to affect him the balance of his life.

Q. It is just a question of how he can best [illegible]re of it, is that true?

A. Yes, sir.

Q. If it is a man's duty as a railway postal clerk to stand on his feet in the mail car when the train is running ex-

cept when it stops to take on and off mail, from twelve to thirteen hours at a stretch, without any relief, and he is required to handle sacks of mail which weigh as much as 125 pounds, and throw them up and down the aisle of the car, and take them in and discharge them, tell the Court and the jury whether or not Mr. Denton will be in a physical condition to stand that kind of service?

A. I don't think he is.

[fol. 159] Q. In your judgment will he ever be that strong?

A. I don't think so.

Q. Does Mr. Denton pay you for your services or do you get your pay from Washington, D. C.?

A. The Compensation Commission pays me.

Q. I want you to take this X-Ray picture to the window there and let about four of the jurors go there, if your Honor please, and let him point out this hole in the man's leg in the bone that he has testified about, and point out the knee cap being too high. Let these four jurors go up there.

Now let these other four here go there and let the Doctor point the same thing out.

And these last four do the same thing.

Q. Now, when did you take that X-Ray picture, Doctor? To refresh your recollection I will ask you if you took it just before the trial last fall?

A. Yes, sir.

Q. That being an X-Ray picture that was taken two and a half years after the injury what would you have to say as to whether or not that this bone has healed there at that hole?

A. I think that it is in very good condition, as well as it will ever be. It shows a depressed condition there in that bone.

Q. You think the hole in that bone will follow him all his life?

A. Yes, sir.

Q. Look at me knee here. As I understand you, this knee cap proper has a leader attached to the lower end of it and comes down and is fastened to the bone down here?

A. Yes, sir.

[fol. 160] Q. And in that operation they split this in here and they went directly through those leaders and parted the leaders in order to reach the bone?

A. That's where the injury was, but I am not going to say that they cut in there.

Q. That's where the trouble was?

A. That's where the trouble was.

Q. In order to reach the trouble they had to go in there of course?

A. They had to go in there.

Q. Have you recommended to the United States Employees Compensation Commission that Mr. Denton go back to work as a railway mail clerk with his leg or not?

A. No, sir; I did tell them this. That is he could get a little lighter job where he could sit down whole sorting out the mail he might be able to do that kind of work.

Q. Set down and not be on his feet?

A. He never will be able to handle bags like that.

Q. That is all.

C-oss-examination.

By Mr. Bozeman:

Q. Have you been requested by the Compensation Commission of the Government to make any recommendation as to whether Mr. Denton was ready to go back to work?

A. Yes, sir.

Q. You have been requested to make a report?

A. Yes, sir.

Q. When was that?

A. I don't remember the date.

Q. Last December?

A. I believe sometime about that time. It has been six or eight months ago.

[fol. 161] Q. Now, Doctor, when Mr. Denton was sent to you by the Compensation Commission, he was sent to you to give him a blood ttreatment, was he?

A. Yes, sir.

Q. What kind of a blood treatment did you give him or was requested to give him?

A. It was a treatment of what we call neo salvarsan. Do you want to know what that is a specific for?

Q. Yes, sir?

A. A syphilitic condition.

Q. Then it seemed to you at the time and to others who treated him that this condition that he developed there was because of some bad blood?

A. Yes, sir.

Q. Just an ordinary man by being struck on the shin or the front of his leg by a sack of mail that way, and that did not even break the skin there, except for bad blood, would not create that condition?

A. Mr. Bozeman, when we get an case like that it is hard to tell. We are always suspicious of some blood matter that causes this failure to heal, and it don't make any difference what it is we make a blood test to see or determine whether they have any blood infection or not. Now, of course, sometimes when we make these tests we fail to find anything, but even then we give them this treatment to build up their blood system so as to enable nature to heal, to assist in healing up these ulcers, which were slow about healing.

Q. After you began the treatment of Mr. Denton, and after you began to give him these blood treatments, what [fol. 162] we laymen sometime speak of as constitutional treatment for his general condition, there developed some abscesses on other parts of his body, one up about his collar bone and one down here about his hip?

A. Yes, sir.

Q. You speak of abscesses, they are about the same thing or something like a boil?

A. Well, yes, sir; it is typical of a boil.

Q. Does or not the abscess finally come to a head?

A. It never comes to a head like a typical boil. It may get a little bit red, but it never comes to a head like an old fashioned boil.

Q. The presence of those abscesses indicate there is an infection of some kind in the blood?

A. Yes, sir.

Q. The wound on his knee down here or on his leg that would not make a boil on a man's shoulder or on his chest here unless his blood was in bad condition?

A. No; that would not mean that. You can have an infection like that and the injury have pus in it and the blood not necessarily be bad. But that can spread and get all over his body.

Q. Suppose at the time of this injury to Mr. Denton he attempted to doctor himself as best he could, and that he got hold of some water that was in the car where he was riding—hot water—and put it on there, and that water

happened to be impure, in what way he might have set up an infection?

A. He could get infected that way. There are many ways that he could get an infection. From unclean dress-
[fol. 163] ing, for instance.

Q. Sometimes from a man's clothing?

A. Dust or something, a man can pick up an infection, and become infected.

Q. Suppose a man has a wound on his leg and he would use a strong linament on it like Sloan's Liniment?

A. That ought not to infect it.

Q. Would it blister it?

A. It might blister it, but the infection would have to come from something else.

Q. It would aggravate it and put a sore on it?

A. The blister might break down, but so far as the Sloan's Liniment, that would not hurt it?

Q. This picture that you have been showing to the jury here, does it show the bone in about its normal size or not? I mean does that show the actual size of Mr. Denton's leg bone, or is it larger or smaller?

A. Well, I would say that was practically just about the size of the bone, the normal size.

Q. The curretting or the scraping of the bone there, that was not done by you?

A. No, sir.

Q. That had already been done before he came to you?

A. Yes, sir; when he was brought to me for observation, or came under my observation.

Q. And the slitting of that ligament to get to the bone, or whatever was done, that was done before?

A. Yes, sir; I had nothing to do with that.

Q. The curretting of the bone is an operation that is done frequently?

A. Yes, sir.

[fol. 164] Q. And is not what you would call a dangerous operation?

A. No, sir.

Q. Now then, his k-ee*n* cap, the fact that his k-ee*n* cap is a little out of what you would call normal, I believe you said that you did not consider that serious at all?

A. No, the position of the knee cap I would not. That is just simply a displacement.

Q. So far as you know, Doctor, or could you tell from your examination, that the knee cap may have always been in that position, may it not?

A. I can't say about that, because a person may have them a little higher than normal.

Q. Sometimes it is natural for a man to have his knee cap a little higher than normal?

A. Yes, sir.

Q. And that scraping or roughness about his knee cap which you can hear when he bends his knee or perhaps hear or feel when he bends his knee, you do not regard that as anything serious at all?

A. No; in my opinion it is just a little roughness there that makes the grating, or what we call crepitation.

Q. That is all.

By Mr. Gipson: We now offer in evidence this X-Ray photograph as an Exhibit A to the testimony of Dr. Anderson.

Document handed to the stenographer and marked Exhibit A to the testimony of Dr. W. Jeff Anderson, and is sent up with this record to the Supreme Court.

[fol. 165] I. S. Watson, called as a witness on behalf of the plaintiff, was sworn and testified as follows:

Direct examination.

By Mr. Gipson:

Q. Mr. Watson, are you the District Manager of the Lamar Life Insurance Company of this District?

A. Yes, sir.

Q. Are you familiar with the book or table commonly known as the Mortuality or the Mortuality Table?

A. Yes, sir.

Q. Does that table show from the experience of the insurance companies operating in America the life expectancy of any person at a given age?

A. Yes, sir.

Q. Would you please refer to that book and tell us what the life expectancy is of a man who is approaching his 29th birthday?

A. How many years?

Q. Twenty-Nine years?

A. Between thirty six and thirty seven years.

Q. Then that means that a man's life expectancy would be sixty-six years: He would life until he was sixty-six years old?

A. Well, between sixty-five and sixty-six.

Q. Between sixty-five and sixty-six years of age?

A. Yes, sir.

Q. Is that a standard work and is it used by the various insurance companies

A. Yes, sir; it is standard and is used by all of them in their business.

Q. That is all.

[fol. 166] Cross-examination.

By Mr. Bozeman:

Q. Now, Mr. Watson, how is this table of mortality compiled? How do they get at that information?

A. Well, by taking up various and different people. That table there, Mr. Bozeman, is based on the experience of mortality of sick and well men. All men are supposed to be under that.

Q. Sick and well?

A. Yes, sir.

Q. It does not include, though—it does not fix the mortality of men who are engaged in a hazardous business, or involve the riding on trains, does it?

A. Well, it depends all together on the occupation on the train, of course.

Q. Is it a fact that men who operate on trains, employees of railroads, engineers, conductors, brakemen and such on trains, that you make them pay a higher rate because of their hazardous occupation?

A. Not of conductors.

Objected to; overruled; exception.

Q. Well, a man operating as a railway mail clerk, riding in the mail cars, such as are used on the front end of the train up near the locomotive, are they,—do you know where they carry the mail car?

A. Yes, sir.
Q. Where?
A. It is in the head part of the train.
Q. Near the engine?
A. Yes, sir.
[fol. 167] Q. Riding in that, do you know whether or not that is a more hazardous position on the train than it is back on the rear end of the train?
A. The company does not think so.
Q. Your company is the Lamar Life?
A. Yes, sir.
Q. They don't think so?
A. No, sir.
Q. Your company does not consider the business of a railway mail clerk, riding in the mail cars in trains, a hazardous occupation?
A. No, sir.
Q. What?
A. No, sir.
Q. They do not charge more premium than they would a clerk on the street?
A. No, sir.
Q. They do not?
A. No, sir.
Q. Now, this mortality table you show here, that does not mean every man that is 29 years old, is going to be 36 years more?
A. No sir.
Q. It shows that every year out of every 1000 that there at the age of 29, that there are 719 deaths?
A. No, sir; only eight deaths.
Q. The death rate per 1000?
A. That is eight.
Q. There are 719 deaths each year?
A. Out of 100,000.
Q. Then each year, out of a—a man at the age of 29, out of 1000 it would be 8-1/13?
A. Yes, sir; that is the way they figure on that.

(Witness excused.)

[fol. 168] At 1:30 P. M. Court met pursuant to adjournment, and the introduction of testimony on behalf of the plaintiff was resumed.

STEVE WEBB, called as a witness on behalf of the plaintiff, was sworn and testified as follows:

Direct examination.

By Mr. Gipson:

Q. This is Mr. Steve Webb?
A. Yes, sir.
Q. What do you do for a living?
A. I work in the Railway Mail Service.
Q. Are you what is called a transfer clerk?
A. Yes, sir; located at Jackson, Mississippi.
Q. On April 21, 1927, was you so located?
A. Yes, sir.
Q. Did you ever run on the railroad as a railway postal clerk before you became a transfer clerk?
A. Yes, sir; I did, about two or three years.
Q. How long have you been in the service?
A. About sixteen years.
Q. What is your age?
A. I am forty-six.
Q. The catcher on the door of a mail car or a railway post office car that is used to catch pouches of mail at little stations where the train does not stop that catches the mail on the fly, does that go into it at the side—does it go cross-ways at the door, or how?
[fol. 169] A. Yes, sir; it hangs down a little bit.
Q. When the mail car pulls into a station or depot, such as Jackson, Mississippi, with a load of mail to be loaded or unloaded, can that catcher arm be pushed forward to get it out of the way of the door and then when your mail is loaded or unloaded be pulled back in place or stationary so that it can be pushed out of the way?
A. It can be loosened and pushed forward.
Q. Is that the universal custom about that? Is there any universal custom about that, or do they load and unload mail sometimes with the catcher arm there and then again to remove it?
A. Sometimes the- load it with it,—without removing it, and then again they move it forward.

Q. When they move it forward who usually moves it forward, the mail porter that brings the mail down on the truck, or the clerk from the inside?

A. A mail porter usually removes it out of the way.

Q. Was you on duty when Train No. 203, Y. & M. V. Railroad, or the Yazoo & Mississippi Valley train west bound, from Meridian, Mississippi, reached Jackson on April 21, 1927, at a time when it is alleged Mr. Jesse H. Denton received an injury to his leg?

A. Yes, sir.

Q. Did you meet that train as transfer clerk that day?

A. Yes, sir.

Q. What is the duty of the transfer clerk?

A. The duty of the transfer clerk is to—the primary duty is to handle all registered mail.

Q. Tell the jury just how you handle the registered mail.

[fol. 170] A. We go into the car and sign for the registered mail, and go into the car and see that the registered mail goes there and get a receipt from the clerk in charge. Take the registered number of each letter just like you sign for it at the post office and carry it—sign for the whole bunch.

Q. You give him a receipt for every registered package or letter you receive from the various clerks on the various trains and you make each one of them give you a receipt for every registered letter or package you deliver to them?

A. Yes, sir.

Q. The registered mail that you handle you have a sack for that that you carry on your person?

A. Yes, sir; we use a No. 3 pouch.

Q. You carry it with you on your person?

A. Yes, sir.

Q. Did you go into train No. 203 the day that Mr. Denton is alleged to have received his injury and receive some registers or sign for them?

A. Yes, sir.

Q. Did you see Mr. Ike Worthington on that train?

A. Yes, sir.

Q. Who was clerk in charge of that Railway Post Office that day?

A. Mr. Ike Worthington.

Q. After you had signed for your registers and delivered the ones you had to deliver, and ready to go out of the car, did anything unusual happen there on that occasion?

[fol. 171] A. Well, not right then.

Q. Before you got out of the car did anything unusual happen?

A. There was a sack fell over against Mr. Denton.

Q. What kind of a sack?

A. It was a sack of mail.

Q. When you say fell over against him, where did it fall from?

A. It was thrown in the car and instead of stopping, it did not stop until it hit him.

Q. Did it fall over against him or was it throwed against him?

A. I say that it was thrown against him.

Q. Who throwed it?

A. It was a porter, Jim Hunter.

Q. Do you know Jim Hunter when you see him?

A. Yes, sir.

Q. Is this bright nigger here Jim Hunter?

A. Yes, sir.

Q. How long have you and Jim been working around the same depot there together?

A. I don't know. Six or seven years.

Q. Long enough for you to know him well?

A. Yes, sir.

Q. At the time that the sack of mail was thrown in there, where was Jim Hunter standing when he throwed the sack of mail in there?

A. Standing on the platform truck.

Q. Where was Mr. Denton standing?

A. Inside the mail car.

Q. How far inside the mail car door would you say he was?

[fol. 172] A. Well, he was over half way from the door in which the sack came in.

Q. You mean by that he was nearer the door on the opposite side from where Jim Hunter was than he was from the side from where Jim Hunter was?

A. Yes, sir.

Q. How wide is the mail car, if you know?

A. I think it is a little over eight feet.

Q. That would make him more than four feet away from the door Jim Hunter was putting the mail in?

A. Yes, sir.

Q. Mr. Webb, how do you designate the size of mail sacks?

A. They are numbered one, two and three. This one here is No. 1 size, and there is No. 2 and No. 3 is still smaller.

Q. What size sack was it by which Mr. Denton was hit?

A. A No. 1.

Q. What size sack is this one laying here before you and the jury?

A. That is No. 1.

Q. Is that a fair representation of the size of the sack that hit Mr. Denton?

A. Yes, sir.

Q. Is that a standard size of mail sack?

A. Yes, sir.

Q. Does this cord there and this metal piece, is that a standard equipment of a No. 1 mail sack?

A. Yes, sir.

Q. What was Mr. Denton doing at the time that he was struck on the leg by this sack of mail?

[fol. 173] A. Well, he put a sack back in the bin and was turning around, or many be he had turned around, I can't say positively whether he had got turned all the way around or not; but he was in the act of turning when the sack struck him.

Q. Was he performing his duties as a railway postal clerk at that time?

A. Yes, sir.

Q. Mr. Denton's declaration charges that there was an extraordinary lot of mail there at that time, more than usual. Do you have any personal recollection about whether or not there was a heavy mail or a light mail at that time?

A. Yes, sir; there was a heavy mail.

Q. Due to what, if you know?

A. Due to the breaking of the Mississippi River levee up north, causing the mail to be detoured.

Q. In order that the record may show it, was Jim Hunter an old nigger, a young nigger, or a middle aged nigger?

A. Well, our records don't show?

Q. Well, in order that this record may show it, what do you say about the age of Jim Hunter, the defendant here?

A. I would say that he was between 35 and 40, somewhere along there.

Q. A small, measley nigger, or a big strong nigger?

A. A big strong one.

Q. How could he handle this sack of mail weighing 100 to 125 pounds? Did he have any trouble in throwing them around where he wanted them?

A. No, sir.

Q. Jim Hunter standing on the truck just outside of the car door, when he would pick up a sack of mail and swing it, would he have any trouble putting it in the mail car?

A. I have never seen him have any trouble with one.

[fol. 174] Q. What did Mr. Denton do, if anything, when this sack of mail struck his leg?

A. He caught his leg and used some expression,—he says, "God damn," he said first, and then just a pause and he said, "That hurt me" just that way.

Q. Was that his expression at that time?

A. Yes, sir.

Q. Apparently was he in pain or not?

A. Well he was in some pain.

Q. How much mail, if you know, did Jim Hunter have on the truck when he hit Mr. Denton with that sack? How many more sacks, if you know?

A. I don't know.

Q. How long did the train stand there after Mr. Denton got hit, if you know? What is your judgment about it?

A. I don't remember just how long it was. I got out of the car immediately. I was there waiting for a chance to get out when this happened, and just as soon as I got out I went on about some other duties.

Q. You had to go out the door where the mail was coming in from?

A. Yes, sir.

Q. Let us get back to this hook on the wall of this car. About how thick is the wall of that car where the door slides backward and forward and opens and closes?

A. You mean where the hook is hung?

Q. Inside where the hook is hung does the door slide backward and forward in the wall of the car?

A. Yes, sir.

Q. How thick is the wall of that car there from the inside on to the outside of the car in your judgment?

A. About, I would say, between eight and ten inches.

Q. How far is it from the outside wall of that car out to where this catcher or hook is?

[fol. 175] A. It is about five inches.

Q. That would make about fifteen inches from the inside wall of the car out to where the catcher or hook swings?

A. Yes, sir; twelve or fifteen.

Q. Mr. Webb, how many porters is there working around the depot that you hire?

A. That I hire?

Q. Yes, sir?

A. None.

Q. How many working around there that you ever fired during the years that you have worked there?

A. None.

Q. Have you got authority to hire or fire any of those mail porters?

A. No, sir.

Q. Did Mr. Denton, running through there stopping to pick up mail and unload mail there, did he have authority to supervise those porters or to hire or fire them, or cut their wages, or anything like that?

A. No.

Q. Who does that?

A. The Station Master.

Q. At the time this happened who done it?

A. I have forgot whether it was the station master or Mr. Tolbert had the mail handlers. They all supervised and looked after the porters for awhile. I don't know whether he was on duty then or whether the Station Master, Mr. Van Buren, was on duty there.

Q. When you are on duty there is no other transfer clerk on duty is there?

A. Sometimes there is.

[fol. 176] Q. In other words, if more trains come in—sometimes there is more trains than one man can handle?

A. Yes sir.

Q. How many transfer clerks work in the depot?

A. Three anyhow.

Q. Do either one of the transfer clerks have authority to supervise those mail porters or fire them or hire them, or increase or diminish their pay?

A. No, sir.

Q. In the event that they do not handle the mail right then how do you reach that? In other words, how do you go about getting ot corrected if one of those porters does

something that he ought not to do, how do you reach them?

A. Well, it would have to be taken up with the Station Master, or the person whoever was in charge of them.

Q. Mr. Van Buren was Station Master was he?

A. Yes, sir.

Q. If that porter on that occasion had so failed to do something that he should have done, or did something that he should not have done, would Mr. Van Buren have been the proper person to have referred them to?

A. Yes, sir.

Q. And then it would have been up to him to take such steps as he saw fit on behalf of who?

A. Behalf of the Railroad Company.

Q. Illinois Central Railroad Company?

A. Yes, sir.

Q. Mr. Tolbert, you say, worked there. Who did he work for?

A. He worked for the Railroad Company.

Q. What position did you say that he had?

[fol. 176½] A. He was supervisor of porters, I think.

Q. Do you mean by that he directed the porters as to what to do and when to do it and so forth?

A. Yes, sir.

Q. What, if anything, did you have to do, or could you have to do with a porter to tell them where certain mail went in the event that they did not know?

A. Nothing else.

Q. On some occasions those porters would not know where certain towns or stations was where mail was going to and would have to ask some one?

A. Yes, sir.

Q. And where certain sacks went or where certain pouches of mail went?

A. Yes, sir.

Q. Who furnished that information when they wanted it?

A. The transfer clerk furnished that.

Q. Just whatever transfer clerk happened to be on duty or any particular transfer clerk?

A. Any one on duty.

Q. Some one of them is on duty twenty-four hours a day?

A. No, a few hours none are on duty?

Q. During that time any trains scheduled to arrive?

A. No, no heavy trains.

Q. Now, if there happened to be a train standing there with a mail clerk in it and the porter would ask him where that sack went to, would the clerk tell him?

[fol. 177] Q. If it happened that there was a train standing there with a mail clerk in it?

A. Yes, sir.

Q. Suppose there was a truck load of mail standing on the platform at Jackson to go to Natchez, Mississippi, and the transfer clerk there would instruct a certain porter, Jim, whoever it was, or some other porter working there like he does in handling mail to carry it to a certain train, and he did not do it, what would happen?

A. If the train went off without the mail then we would have to report it to our chief clerk, and of course the station master would get the report, and if they found out that the porter would not handle it, then it would be up to the station master to hunt up another porter.

Q. You would have to go to the porter's railroad boss, is that true?

A. Yes, sir.

Q. The boss whom worked for the railroad company?

A. Yes, sir.

Objected to as leading; sustained.

Q. That is all.

Cross-examination.

By Mr. Bozeman:

Q. Now, Mr. Webb, I believe you stated you are what they call the transfer clerk?

A. Yes, sir.

Q. You were at the time that Mr. Denton got hurt?

A. Yes, sir.

[fol. 178] Q. Now, it was part of your duties as transfer clerk there at Jackson to see that the mails where they came in on one train and where needed to be transferred to another, to properly transfer them?

A. Yes, sir.

Q. Did you have a room set aside there in the Jackson terminal of that kind for the mail and postal clerks?

A. Yes, sir.

Q. Given over exclusively to them, was it?
A. Yes, sir.
Q. Nobody else had a right in that room in there except you as transfer clerk and the employees of the Government?
A. The employees of the railroad.
Q. Of the railroad?
A. Yes, sir.
Q. Employees of the railroad?
A. Yes, sir.
Q. But it was set apart as a mail room?
A. Yes, sir.
Q. They did not put baggage in there?
A. No, sir.
Q. They did not put any express in there?
A. No, sir.
Q. No place for passengers in there, but was set apart for that sole purpose?
A. Yes, sir.
Q. And when the mail came in there on one train and had to stop there, that is where you kept it, in that room, did you?
A. Yes, sir.
[fol. 179] Q. Stored it?
A. Yes, sir.
Q. Put in there in the sacks and in piles?
A. Yes, sir.
Q. Who was the man that was in immediate charge of the room?
A. The transfer clerk.
Q. And when you were on duty you were the one?
A. Yes, sir.
Q. If any other transfer clerk was on duty he was in charge?
A. Yes, sir.
Q. Suppose that the railroad porter was sent into this room to handle some of that mail in there, you were the one to tell him what mail to handle, were you?
A. Yes, sir.
Q. You were the man that pointed out to the porter and told him, "here, take this or that sack of mail to the Yazoo & Mississippi Valley No. 203," or whatever train you wanted it to go?

A. The porter knows that the railroad company is really responsible for the separation of an ordinary sack of mail. The railroad Company is charged with that. For instance, if they mis-send a sack of mail the railroad company is responsible for it.

Q. What supervision did you have over him, if at all?

A. Well, I was there to assist those porters in any way they wanted me.

[fol. 180] Q. Yes, sir; that is what I saw. You were there to assist those porters?

A. Yes, sir.

Q. Well, Mr. Webb, don't you know that it was just the opposite. You were not there to assist those porters, but the porter is a menial servant, put there to do what you tell him to do?

A. No.

Q. You don't mean to tell this jury that you assisted that nigger porter,—you, a transfer clerk representing the Government of the United States, and responsible for the mail, and the mere assistant of a nigger porter? Isn't it a fact that the nigger porter was sent there to wait on you?

A. Well, the facts in the case is, I handle all of the registered mail and the porter does not handle any of that at all. But as there will be fifteen to twenty truck loads of mail to transfer at the same time, I don't put my hand to a sack of it.

Q. Isn't it your business to see that it goes to the proper train?

A. It is my business to let the porter know that it does go to certain trains. Nearly all of the porters are trained enough to handle the mail without my assistance, but they will find some sack that they don't know where to go.

Q. And you tell them about that if they don't know?

A. Yes, sir; if they ask me I will tell them.

Q. You yourself do not have anything to do with the handling of these heavy sacks in person?

[fol. 181] A. No, sir.

Q. You only handled registered mail?

A. Yes, sir.

Q. You were at one time a railway mail clerk and had to handle the heavy sacks?

A. Yes, sir.

Q. But your health got bad and you got them to transfer you from the railway mail service to this transfr clerk where you would not have to do that heavy work?

A. No; I did not get them to transfer me. I resigned and got reinstated in the transfer office.

Q. You managed to get a lighter job some way or the other?

A. Yes, sir.

Q. You did do that?

A. Yes, sir.

Q. The transfer clerks are not employed in any way by the railroad company?

A. No, sir.

Q. They are in the employ of the government?

A. Yes, sir.

Q. And Mr. Worthington was in the employ of the Government?

A. Yes, sir.

Q. And Mr. Denton was in the employment of the Government?

A. Yes, sir.

Q. And you, gentlemen, in the employ of the Government in the railway mail service, it was your duty to handle the mail?

[fol. 182] Yes, sir.

Q. That has been carried—the mails are carried by the Government, are they? I mean by that the Government gives you directions, that is true, isn't it?

A. Yes, sir, I think so.

Q. Well, with all of your years of experience you know that the Government handles the mail—I mean the railroad company it on the train under contract with the Government, don't they?

A. They do it under contract with the Government.

Q. The Government hires the railroad to let them carry the mail on the trains?

A. Yes, sir.

Q. Are you familiar with this regulation of the postal laws, Section 1293, which I now show you, which provides that the railroad company shall furnish the men necessary to handle the mail to the railroad trains and to receive them from the doors of the railway post office car, and to

load and pile the mail and to unload them from the storage and baggage cars under the direction of the transfer clerk, or the clerk in charge of the car, if one is on duty?

A. Yes, sir.

Q. On this particular occasion and this particular car, this car in which Mr. Denton was in when he was hit, was a railway post office car, was it?

A. Yes, sir.

Q. And you were there present in the car, being the transfer clerk?

A. Yes, sir.

[fol. 183] Q. And Mr. Worthington was there present in the car, being the clerk in charge?

A. Yes, sir.

Q. And Mr. Denton was there in the car, being a railway mail clerk?

A. Yes, sir.

Q. Second to Mr. Worthington?

A. Yes, sir.

Q. Now, this nigger porter, Jim Hunter, was on the outside loading the mail into this car?

A. Yes, sir.

Q. Now, under the provisions of that regulation which I have just read to you there, he was doing that under the direction and supervision of the transfer clerk there—the clerk in charge of the car was he?

A. Yes, sir; that is what he says.

Q. Now, as a matter of practice and custom, if Jim Hunter had had on that truck a sack of mail that he was going to put in that car that did not belong there and that Mr. Denton, who was receiving it at the door had seen it and recognized it did not belong there, it would have been his duty to tell Jim Hunter not to put it in the car, would it, but to put it back on the truck?

A. To have given it back to him after he put it in the car.

Q. To give it back or not to take it in the door, and whatever else Jim Hunter was doing there wrong in the matter of handling the mail, it was the duty of whoever was mail clerk in charge to direct him to throw it out so that it might be properly handled?

[fol. 184] A. Yes, sir.

Q. That was just common sense as well as regulation, was it not?

A. Yes, sir.

Q. With reference to the catcher arm, now this catcher arm, as has been explained to the jury here, consists first of an iron rod that runs horizontally across the opening of the door about four feet above the floor. That is the mail part of it?

A. Yes, sir.

Q. Above that catcher arm is an upright iron handle standing up there about eighteen inches?

A. Yes, sir; twelve or eighteen. It is usually a wood handle up to the top.

Q. And underneath hanging down diagonally from the horrizontal hod was another iron rod that extended horizontally down there which formed the catcher for the mail sack?

A. Yes, sir.

Q. It is a heavy thing is it?

A. Made out of steel.

Q. And this horizontal rod here works in a loose socket so it would fall according to weight?

A. Yes, sir; when you——

Q. Turned it loose?

A. When you turned it loose it automatically fell itself.

Q. It just pulled the iron rod down?

A. Yes, sir.

[fol. 185] Q. In order to move the catcher you have got to move the handle—pull it over?

A. Pull it in, and that throws the catcher outside.

Q. And when you turn it loose the iron arm falls down?

A. Yes, sir.

Q. Now, assuming that that arm was in position there four feet above the door, and this man, Jim Hunter, was standing on this truck outside loading it, that catcher arm would come about there somewhere around about his elbow, would it?

A. Yes, sir; I imagine it would.

Q. Just above his elbow?

A. Yes, sir.

Q. So that whatever mail he was loading in the car now he would have to pick it up off the truck and put it under that catcher arm?

A. Yes, sir.

Q. And when he was standing on the truck close to the door this catcher arm, which was outside the car door, was pretty near against his body wasn't it?

A. Well, partially, but that catcher arm came off—came off from the bar, you see and came around and just slanted down towards the front, and when they are back at the lower end of the catcher arm, it was not much lower than the bar that run across the door.

Q. Yes?

A. And then it slanted off angling and gets further away.

Q. The back of the door faces the catcher arm?

A. You just lift the bar.

[fol. 186] Q. The height of this bar?

A. Yes, sir.

Q. As it goes down its diagonal way on the other side of the door about two feet above the floor?

A. About two or two and a half feet.

Q. So if the diagonal bar running across the door is about two and a half feet, then that would throw it up to four feet running up?

A. Yes, sir.

Q. At this place it was four feet high and you could put several sacks of mail in there?

A. Yes, sir.

Q. Under the catcher arm?

A. Yes, sir.

Q. Down there at the other end where it came near the floor he could just put but very little mail in there under the arm?

A. Just could not get under there much. Of course he could throw it in from the back. Throw it back.

Q. Throw it back this way?

A. Yes, sir.

Q. Now, you were in the car when Mr. Denton was hurt transferring the mail, the registered mail, with Mr. Worthington?

A. Yes, sir.

Q. The clerk in charge?

A. Yes, sir.

Q. And you were getting ready to go out the very door they were loading the mail in?

[fol. 187] A. Yes, sir.

Q. Mr. Denton was in the car taking the mail away from the door as the porter was piling it in as near as he could?

A. Yes, sir.

Q. But on account of the quantity of mail that had accumulated there from this flood there was an unusual amount of mail to be loaded?

A. Yes, sir.

Q. The porter had been loading it in the door faster than Mr. Denton could take care of it? Than he could take it out?

A. Yes, sir.

Q. And that caused a pile of mail to accumulate in the doorway?

A. Yes, sir.

Q. About two or three feet high?

A. About two or two and half feet high.

Q. That leaves only, if it was two and a half feet high, that leaves only eighteen inches between the top of that mail pile and the cross bar of the catcher arm?

A. Yes, sir; but the top of the mail was angling over, slanting over, and they put the top of the mail pile some distance inside of the catcher arm, you see.

Q. They had put the mail far enough into the car so that it would not fall back out?

A. Yes, sir.

Q. Safely inside?

A. Yes, sir.

[fol. 188] Q. This particular sack that struck Denton, Jim Hunter picked the sack up off the truck and pitched it up on top of the pile of mail and it landed on top of the pile of mail and with the force it had it slipped on over it into the aisle, and that is the way that it happened to hit Denton?

A. Yes, sir; it came right on over and struck him. The sack came right over and struck him without stopping.

Q. It carried some of the other mail along with it, did it?

A. Kind of drug itself over. Kind of pulled over the mail with it as it went over.

Q. In other words, the sack was not pitched over into the aisle of the car clear over the top of the pile of mail,

but was thrown up on top of the pile of mail and slid on over, carrying the other mail with it down into the aisle?

A. Yes, sir; it struck the top as it went over and kept going.

Q. And carried the other mail with it?

A. Yes, sir.

Q. You say at that time Mr. Denton had just put a sack of mail into the bin and turned back towards the door?

A. Just near as I could say, he had just turned back.

Q. Do you remember which side of the door he was on, whether on the same side you were on or whether he was on the side of the door from you?

A. He was neared to the side door from me. Near the side of the aisle.

[fol. 189] Q. Lengthways up and down the car?

A. Yes, sir; neare the opposite side from me.

Q. Opposite to you?

A. Yes, sir.

Q. Just as if this was the car here headed towards Vicksburg. Mr. Worthington was back in here?

A. Yes, sir.

Q. And you were on that side of the door?

A. Yes, sir.

Q. And Mr. Denton was on the front side of the door?

A. Yes, sir.

Q. Near the door, however?

A. Yes, sir.

Q. And he had put something in the bin and had turned back?

A. Yes, sir; he had put one over in the bin to his left and was turning around.

Q. Had put one sack on the other side of the car and was turning around?

A. Yes, sir.

Q. You don't remember how much mail was still on the truck unloaded when this thing happened?

A. No, sir; I am not positive just how much it was.

Q. Now, Mr. Webb, it is not an unusual thing in unloading mail of that kind for a porter to be able to load the mail into the car faster than the mail clerk can take it and distribute it, is it, the sacks of mail?

A. Well, it is not specially unusual, and yet it is a little [fol. 190] bit too. They are supposed to take it out as fast

as he puts it in to keep any from getting damaged from any falling on it.

Q. If the porter works right along of course he can put it in faster than the clerk can move it?

A. Yes, sir; but this particular train, and nearly all trains have more than one clerk on duty to take in the stuff. They are supposed to take it in and then work it out. I mean by that they take it in and then take and work the mail, separate it, and put it in there. They call the clerk working until they can get it out as fast as they put it in there.

Q. In this car at that time the Government was furnishing one clerk?

A. Two clerks, but one had gone back to the back end trying to get the late mail worked up.

Q. Mr. Worthington was not working at all to take it in?

A. No, sir.

Q. So being but one man left the porter naturally piled it in faster than Mr. Denton could move it?

A. Yes, sir.

Q. Because the porter only had to pick the sack up off the truck and lay it in the door, and Mr. Denton had to pull it away from the door and read the label and carry it back and put it in some special place, did he?

A. Yes, sir.

Q. And it took some longer to do that?

A. Yes, sir.

[fol. 191] Q. Now, this was in the day time that this happened?

A. Yes, sir.

Q. It was a three foot door there through which the mail was being loaded?

A. Yes, sir.

Q. The truck was right alongside the door, right at the edge of the door?

A. Yes, sir.

Q. The porter was standing right by the door throwing the mail in?

A. Yes, sir.

Q. It was easy for a man standing inside the car like Mr. Denton was there and the truck like it was, if he wanted

to do it, to see exactly what sacks of mail were on the truck to be loaded?

A. Well, you could just see the pile of mail; that there was a pile of mail on the truck.

Q. Denton was really within four feet of the truck of mail?

A. Four or five or may be six. Four, five or six.

Q. It was easy for him to see what the porter was doing? What mail was to be loaded, and the pile of mail in the door and all of that. He had to see it?

A. Yes, sir; it was right there in front of him.

Q. That is all.

Redirect examination.

By Mr. Gipson:

Q. Mr. Webb, Mr. Bozeman asked you if Mr. Denton could not see the truck and how much mail there was on it and knew how much mail was in the door, and so forth. [fol. 192] Of course he was right there, as you say, and of course he could see it. Now, if he was doing his duties, which calls for him to pick up a sack of mail and pull it back and read the label in order to see whether it was going to Little Rock, Arkansas, or Alexandria, Louisiana, or Fort Worth, Texas, or California or Oklahoma, and had to place that sack in a compartment where it would go to its destination, he could not read the label and watch the porter at the same time, could he?

A. No, sir.

Q. He could not read the label and watch the truck at the same time, could he?

A. No, sir; impossible.

Q. Was it Mr. Denton's duty as a postal clerk to read the labels or not?

A. Yes, sir; it was.

Q. Could Jim, or whoever the porter was standing on that truck pitching the mail in, could he see Mr. Denton? Was Mr. Denton in plain view of him?

A. Yes, sir; right in plain view. An open door between them.

Q. Was it necessary for Jim Hunter to read the labels, or was he to pass them to the mail clerk to read them?

A. He was to pass them to the mail clerk to read them.

Q. Do these sacks go into the mail car with the label end ahead or the label end behind?

A. Well, sometimes loaded one way and sometimes another. Sometimes they come in ahead and sometimes behind.

[fol. 193] Q. Any regulations or rules requiring them to put them in either way?

A. Not that I know of.

Q. Do they hold trains at the depot in Jackson until all the mail is loaded when they have a large mail or not?

A. Yes, sir; if we can accommodate it.

Q. If they have got room for it on the train they hold it, is that right?

A. Yes, sir.

Q. They do hold it until they get the space full?

A. Yes, sir.

Q. Is there any time limit as to how long you can hold a train to get the train loaded or space filled?

A. No; until you get the train loaded or the space filled in schedule time.

Q. In other words, the time that you can hold a train, to load the mail is not limited to a certain number of minutes?

A. No, sir.

Q. You can either hold the train until you load all of the mail or either until you fill all of the space you have to carry the mail in?

A. Yes, sir.

Q. On this particular occasion I believe they secured an extra thirty foot space, the other half of the car, in which to carry the extra accumulation of mail?

A. There were some there. I don't know whether it was the whole of the thirty foot or not. I know that they had [fol. 194] some mail in there but I don't know how much.

Q. Mr. Bozeman, in that nice way of his, asked you if that sack did not hit the top of this mail in there in the door and fall on over and hit this man on the leg. What we want to know is did it happen that way or was that sack of mail slung or thrown in the door by the porter and hit this man on the leg?

A. Well, he threw it up and it kept coming in and never did stop. It struck on top of the pile but never did stop, and went right on over.

Q. You mean it touched on the pile as it went?
A. Yes, sir.
Q. Did the top of the pile stop its force or not?
A. No; it did not *sopt* it.
Q. Did it stop before it hit Mr. Denton on the leg?
A. No, sir.
Q. Now, Mr. Bozeman read a regulation to you a minute ago in regard to you men there directing the porter and then he asked you a question and used the word "supervise" in the same question. Now, suppose you direct the porter to take a sack of mail and put it on the Illinois Central going to Memphis, have you got any authority to make him do it?
A. No, sir.
Q. Then, you can direct him, as I understand it, but you can't enforce your direction?
A. No, sir.
Q. Then have you got any authority to supervise the porter and tell them which train to load and which not to load, what hours to work and what hours not to work, and [fol. 195] if some is going to lay off, what days he will lay off?
A. No, sir.
Q. Now, Mr. Tolbert, the gentleman you spoke of a few minutes ago that works for the railroad company and supervises the porters there. Was he supervising them in April, 1927?
A. If I am not mistaken he was. I am not positive about that.
Q. Now, Mr. Tolbert, did you have any authority over him?
A. No, sir.
Q. Mr. Bozeman asked you a question about the catcher, and he assumed, I take it from the question he asked you, that the catcher arm across there was not pushed back when the mail was throwed on the occasion that he asked you about, and that you have testified about. Do you know whether or not that catcher arm was pushed forward out of the way, or whether or not it was in position when this train in question was loaded with mail?
A. No; I can't say positively whether it was or not.
Q. I believe you said on your direct examination that the

mail porter loaded the mail and took the catcher and pushed it forward out of the way?

A. Yes, sir.

Q. Then when the catcher was pushed forward out of the way, there would be no obstruction at all plumb up to the top of the door about that high?

A. Very little. The end of the catcher arm reached to [fol. 196] the back part this way—reached back a part of the way over the door and just obstruct it a part of the way. I mean the main bar across it.

Q. You mean on the door from here to here?

A. Yes, sir.

Q. The catcher arm would come across here and would be a bar or hanger sticking out that the catcher would come through?

A. Yes, sir.

Q. Just outside the car door?

A. Yes, sir.

Q. Also run through along here?

A. Yes, sir; the back end.

Q. The catcher points in the direction to catch the mail in the direction the train is going and makes the handle just stand up here?

A. Yes, sir.

Q. Now, this catcher coming straight across would have another bar leading in here what you call the arm and it comes down like this?

A. Yes, sir.

Q. And to get hold of the handle bar you have to reach right in here?

A. Yes, sir. Q. That is for the purpose of catching the mail at stations where the train does not stop.

Q. When you go to push this catcher out of the way in fact all you have to do would be to remove this which you pull forward this way out of the way—out of a hole like that [fol. 197] and push it on over this side of the door until the butt end of that catcher stops back there, is that right?

A. Yes, sir.

Q. And then all this door would be loose and open and nothing to interfere with passing the mail in and out?

A. That is it.

Q. And you tell this jury that you don't know whether the catcher was across the door or not at that time?

A. I don't know.

Q. But you do tell the jury that this nigger, Jim Hunter, threw this sack of mail in there and hit Jesse Denton on the leg?

A. Yes, sir.

Q. And you was in the aisle at the time that Denton was hurt?

A. Well, I didn't think that he was hurt bad. I heard him complain like I said, but I didn't think that he was much hurt?

Q. But you knew that he was hurt?

A. Yes, sir; I knew that he was hurt some.

Recross-examination.

By Mr. Bozeman:

Q. You realized that when,—that was when you heard Denton say, "God damn, that hurt me," or something like that?

A. Yes, sir.

Q. He went on about his work?

[fol. 198] A. He went on placing another sack.

Q. This catcher arm that you spoke about, what does the horizontal bar rest in that runs on the outside—it slips through something like this pencil through my finger?

A. Yes, sir.

Q. How far back from the face of the door is this ring it slips through?

A. I imagine that six or more inches. Six inches at least.

Q. On each side?

A. I never have noticed one of these closed, but about six inches.

Q. On account of the construction of the catcher arm, if you could not slip it back and get this diagonal bar out of the way at all, could you?

A. No, sir; it cannot slip backward.

Q. It would not go through that ring?

A. No, sir.

Q. This arm here would catch it, and you would have to loosen it back here to slip it forward?

A. Yes, sir.

Q. And when you pull it down this way the catcher arm projects out the door?

A. Yes, sir.

Q. As the catcher arm is in its normal position it has rubber washers and bumpers on there at each end of it where it works in there?

A. Not the front end. It does on the back. On this back end is a rubber washer.

Q. Can it be moved without taking those rubber washers off?

[fol. 199] A. Yes, sir.

Q. Now, can you say whether or not this catcher arm on that occasion was in its normal position?

A. I don't know whether it was or not. I will not say one way or the other.

Q. There is one question that is suggested to me by Mr. Mackey that I forgot to ask you Mr. Webb. While you were standing there in the car waiting to get out from watching this loading, did you hear Mr. Denton or anybody say to this nigger porter there that he had put enough mail in the car for the present and to wait and stop loading it?

A. No, sir.

Q. You did not hear that?

A. No, sir.

Q. Is that true?

A. No, sir.

Q. Did you say that?

A. No, sir.

Q. Nor did Mr. Denton?

A. No, sir.

Q. Nobody gave that instruction?

A. Not that I know of.

Redirect examination.

By Mr. Gipson:

Q. Did you hear any of the railroad officials, or the conductor holler out to chunk it in and get them away, or hurry up, or anything like that?

A. Not that day. If I did I don't pay no attention.

[fol. 200] Q. Is it anything unusual to hear my friend, Mr. Van Burem say: "Chuck it in; hurry up and get this train away from here"?

Objected to; sustained; exception.

Q. That is all.

(Witness excused.)

[fol. 201] C. W. VAN BUREN, recalled as a witness on behalf of the plaintiff, having been previously sworn testified as follows:

Direct examination.

Mr. Gipson:

Q. On April 27, 1927, on the day the accident is alleged to have happened to Mr. Denton's leg at Jackson, Mississippi, what position did Mr. Tolbert hold with the Illinois Central Railroad Company?

A. Mr. Tolbert at that time was a supervisor under me as a porter foreman. Foreman over the porters.

Q. He supervised the mail porters, is that right?

A. Baggage and mail porters; yes, sir.

Q. Mr. John Hunter was one of those porters he supervised?

A. Yes, sir.

Q. And Mr. Talbert was on the pay roll of the Illinois Central Railroad Company?

A. Yes, sir.

Q. That is all.

Cross-examination.

By Mr. Bozeman:

Q. To what extent did he supervise?

A. Mr. Tolbert's duty was to see that the mail was hauled from one train over to the other and to keep up with the porters and see that they were moving around on the platform. But I had full control of every person around the passenger station and terminal. The Station Master is responsible for every act and everything else that is done around the station.

[fol. 202] Q. Now, Tolbert was just a sort of a sub-foreman?

A. That is all.

Q. To keep up with them?

A. In other words I had a little bit more at that time than I could handle, because if we were not on the lookout the Government would catch us for three or four hundred dollars worth of fines. If a sack of mail is missent from Jackson, we might not know anything about it, if it

is missent they deduct a dollar from the pay of the railroad, the Government does, and we can write all the letters that we want to, the dollars are taken out. They do not give any explanation or anything of that kind for doing anything like that. So we put Tolbert up there to see if we could overcome this mail failure.

Q. When it come to the loading of the mail in the car the porter carried his truck up there and got it by the mail car, and the mail clerk on the inside would take it in. When it came to what the porter did in the way of loading mail—how he did anything of that kind, did Talbert have any supervision of or direct him in that at that time?

A. He had nothing at all only to see that he carried it from one train to the other.

Q. The porter who was on duty?

A. On duty.

(Witness excused.)

[fol. 203] The plaintiff rests.

Whereupon the defendants, to maintain the issues on their part, then and there offered and introduced the following testimony, to-wit:

[fol. 204] JIM HUNTER, colored, defendant, called as a witness, was sworn and testified as follows:

Direct examination.

By Mr. Bozeman:

Q. Your name is Jim Hunter?

A. Yes, sir.

Q. Jim, you are one of the defendants in this case, are you?

A. Yes, sir.

Q. Sued by Mr. Denton?

A. Yes, sir.

Q. Are you the porter that was on duty and handling the mail at Jackson at the time Mr. Denton claims he was hurt?

A. Yes, sir.

Q. Jim, that was in April, 1927?

A. Yes, sir.

Q. How long had you been working there at the Jackson depot as a porter in 1927?

A. I was working in 1924. I got it in 1924.

Q. Are you still working there?

A. Yes, sir.

Q. Still porter?

A. Yes, sir; still porter.

Q. Still handling the mail?

A. Yes, sir.

Q. Then you had had about three years experience there at Jackson in loading mail, had you?

A. Yes, sir.

[fol. 205] Q. And unloading?

A. Yes, sir.

Q. Did you work every day loading and unloading mail?

A. I have not missed a day for five years.

Q. I mean did you work every day in the week?

A. Every day in the week; yes, sir. But I had different men to relieve. I was on a kind of a relief job.

Q. What do you mean by that?

A. I would have three men—I had three men that I had to relieve—three in the day and three in the night to relieve.

Q. Whatever that was, you were loading this mail in this particular mail car where Mr. Denton claims to have been hurt?

A. Yes, sir.

Q. Just explain to the jury how you load that mail? First, where did you stand to load it?

A. I got up—I pulled my truck up to the door—I catch the I. C. No. 3 mail and then I goes after the Gulf Mail—that's the first mail they give me, and the next mail they give me is the Natchez mail and the Yazoo mail and next I get the House mail, on different tracks. After then I gets all my house mail I pulls my truck up there with the mail on it and I gives him the pouches first. The first thing I give him is the pouches, and then I pulls my truck up there to the car and gives him all the work mail, sacks and things.

Q. Now, this mail that you were loading in this car was on the truck, was it?

[fol. 206] A. Yes, sir; on the truck.

Q. And you pulled the truck up to the side of the car door?

A. Yes, sir.

Q. Now, the floor of the truck and the floor of the car, how were they? Were they about even with each other or one above the other, or how?

A. The train was a little higher than the truck.

Q. Then the floor of the car was a little higher than the truck?

A. Yes, sir.

Q. Where do you stand when you unload the mail from the truck into the car?

A. On the truck.

Q. Stand up on the truck?

A. Yes, sir.

Q. Now, do you know this catcher arm that goes across the door?

A. Yes, sir.

Q. Used to catch mail?

A. Yes, sir.

Q. Well, now, when you are standing on that truck loading that mail, about where does that catcher arm strike you?

A. When I am standing up like this, standing to one side just like this, that catcher arm comes right down the side of me and hits me right here. When I stoop down to get my sack that catcher arm hits me and I lean against the catcher arm to put it in the door. I have to stoop down [fol. 207] like this. I can't raise up like that. It throws me stooped down to put it in the door all the time. I never be—never was standing up to throw any in, and am always on the bend like that to put it in the door. Just like that. I get one sack and put it in the door and get another and put it in the door.

Q. This book or this catcher arm across there, do you have to put the mail under the catcher arm?

A. Yes, sir; all the time.

Q. And you can't stand straight to do that?

A. Can't stand straight.

Q. You have to be in stooping position?

A. Over there stooping. Stooping position.

Q. Now, loading the mail in this car, this particular car this day—you were loading it?

A. Yes, sir.

Q. Did you know anything about Mr. Denton being hurt by a sack of mail that you put in there?

A. I didn't know anything of it until a month or so.

Q. While you were loading that mail there that day did Mr. Denton say anything to you about having thrown a sack of mail in there and striking him on the leg?

A. Not a word.

Q. Did Mr. Steve Webb, or anybody else in there?

A. Not a word.

Q. Did you hear Mr. Denton make any outcry or indicate in any way that he had been hit or struck by a mail sack?

[fol. 208] A. Not a word.

Q. Were you throwing the mail sacks in that car, Jim?

A. I did not throw them in that door.

Q. How did you put it? How did you put them in?

A. You see, I have got a general way. I just reach down on the truck like this. You see the mail clerk is standing up there in the car in front of me, and I get it up and start it in the door like this thing here, and you put it in that door just this way. Just as fast as I get the sack I put it in the door.

Q. Is that the way you were doing it on this occasion?

A. Yes, sir.

Q. Did you pick up a big mail sack loaded with mail like this sack lying before the jury and just pitch it into that car there?

A. You can't do it for that catcher arm will knock your arm off if you try to pitch it in that way.

Q. You can't do it?

A. No, sir.

Q. Why can't you do it?

A. You have got to lift it up and shove it in just like that, them big sacks like them.

Q. That's the way you do it?

A. Yes, sir.

Q. As you were loading that mail there were you loading it as carefully as you could?

A. All of them careful. You had to be careful. Those man standing in the door there they can see you and the truck too.

[fol. 209] Q. Did you hear Mr. Denton say that you had gotten a *a* pile of mail in the door before he could get it away?

A. What?

Q. Were you putting the mail in faster than Mr. Denton——

A. (Interposing.) I was putting it in faster than he could take it out the door.

Q. Do you remember whether the train was late or not?

A. The train come on time.

Q. Came in on time?

A. Yes, sir. No. 3 throwed it late. That is what throwed it late.

Q. Did Mr. Denton tell you while you were putting the mail in there that you were putting it in too fast and not to pile it up there?

A. Never did.

Q. Did he give you any instructions about it at all?

A. No, sir.

Q. Now, Jim, you have explained to the jury there, and showed to the jury how you have loaded that mail? How it was done?

A. Yes, sir.

Q. Was that the way you did it all the time?

A. Ever since I have been there and that's the first kick I ever had.

Q. The first kick that you ever had?

A. Yes, sir.

Q. On this day that Mr. Denton claims to have been hurt you loaded that mail in that car just the usual way, like you did all the time?

[fol. 210] A. All the time.

Q. The same way?

A. Yes, sir; and you can't hurry me on those trains at all. That train is not a hurry train like No. 3.

Q. No. 3 is the Illinois Central Main Line.

A. Yes, sir.

Q. While this mail was being loaded there, Jim, was this catcher arm across the door there where it always stays?

A. It is always put there. I never take it down, for if it aint hanging up it will fall down on the ground. It is

too heavy and it has got to be in its socket. If you take it out of its socket it will fall right on the ground.

Q. Now, this day on this occasion was the catcher arm in its normal place across there?

A. All the time, the same way.

Q. Like you have described it?

A. Yes, sir.

Q. Did you ever move it yourself to load mail—take the catcher arm off?

A. It is against the rules to move it.

Q. You did not do it?

A. No, sir.

Q. That is all.

Cross-examination.

By Mr. Gipson:

Q. You say it is against the rules to move the catcher arm?

A. Yes, sir.

[fol. 211] Q. Against whose rules?

A. Against the company rules. I never moved any one.

Q. You say you don't move it?

A. No, sir; I never moves them. I just stacks the mail up there in the door as high as I possibly can—put it there. Nobody bothers me in the door, while I am putting it in the door, but the way those mail clerks has I never move that. I don't know what sort of a rod that is.

Q. The mail clerks being on the inside would not keep you from moving that rod on the outside?

A. I don't know. I never moved the rod at all.

Q. You say it is against the rules. Is it against the Government rules or the railroad rules?

A. I guess the railroad and the Government too. I never do move that.

Q. Do they move them on the train?

A. Move them on the storage car. They have got a little small rod. You can move that and stack up the door like that, that high. But you don't generally move none of them little cars.

Q. You say you don't generally do it?

A. I don't do it.

Q. You do do it sometimes?

A. I don't know. I never do it.

Q. You say it has been done, but you never do it?

A. I have never done it.

Q. Have you ever seen any of the other porters move them?

A. I have never seen a porter on the job move that one.

[fol. 212] Q. Did you ever move a catcher arm on another train?

A. Never have.

Q. You are positive about that?

A. Yes, sir.

Q. You said a minute ago that they could not hurry you on this train?

A. They did not hurry me.

Q. Let's get that. This was not a hurry up train like No. 3?

A. No, sir.

Q. You don't have to hurry and load that like you do the other trains?

A. Most all of the trains come in there on time and No. 3 is mostly late most all the time, and No. 3 gets in there at about 3:05—due at 2:55 at that time, and this train stays there about ten minutes and you have got all the time in the world to put the mail in there.

Q. But Jim, didn't you have to put twice as much mail on this No. 203, the Yazoo & Mississippi Valley going west at that time?

A. No; I did not put in any storage mail in that car at all. All that mail that came down on No. 3 went into the storage car. It did not go into that car that he was in and working the mail.

Q. Working the mail?

A. Yes, sir.

Q. Did he read all those labels?

[fol. 213] A. Yes, sir; I handed him every piece of it.

Q. Now, you had several hundred sacks, did you?

A. No, sir. I did not have that many.

Q. How many sacks did you have, do you say?

A. On the truck?

Q. How many sacks, that is what I am asking?

A. I guess in parcels and everything I guess I had around ninety sacks, something like that, on the truck.

Q. That all had to go in the door-way?

A. Yes, sir.

Q. And you tell the jury that he read the labels on those ninety sacks in order to know whether they were storage mail or working mail?

A. You don't generally know what I am talking about. Here is what I mean, Captain. I mean just so: You see the regular mail what they work, the mail they get to go to Louisiana—Monroe, and places like that, that mail comes down there it does not go in the car that he was in. It went into a different car where they had space for that stuff. He only worked that stuff that went into his car. That is what I am speaking about.

Q. Well, just answer my question. Did he read the labels on all of those ninety sacks you say you put it in the door, or not? Did he read the labels?

A. He read all that came from time——

Q. (Interposing.) Did he read all of them or not as you put them in that door?

A. All on my truck he read.

[fol. 214] Q. What was the occasion of his reading the labels if he did not have nothing to do with the dispatching the mail in the car?

A. He would have to see where it would go.

Q. That is your idea about it?

A. Yes, sir.

Q. Now, who was clerk in charge of that car? It was Mr. Ike Worthington, wasn't it? You knew him, did you?

A. Yes, sir.

Q. You know he is now dead?

A. Yes, sir.

Q. Mr. Worthington was clerk in charge of the mail car was he?

A. Yes, sir.

Q. And he is the man who made the arrangements for the extra thirty foot space in which to haul the storage mail, is he?

A. Yes, sir.

Q. And, of course, he having other things to look after he left Mr. Denton by himself in the railway post office to handle the mail, did he?

A. Well, not as I know of.

Q. Did Mr. Ike Worthington take any mail from you into that car that day?

A. I can't say if he did or not.

Q. All right. You said a few minutes ago that you could not throw the mail in that car because the mail clerk was standing there in the door and you would hit him? You knew that, did you?

[fol. 215] Objected to.

By Mr. Bozeman: We object for the reason it is not my understanding that the witness made any such statement at all. He didn't say that.

By Mr. Gipson: All right, we challenge the record, and let us see.

By the Court: Go ahead with the question.

By Mr. Gipson:

Q. You testified when Mr. Bozeman had you that you did not throw the sack in there and that you did not throw it because the catcher arm was in the way, and you followed that up and said that the mail clerk was always in there, and that you could not throw it in there for you would hit him? Did you testify that or not?

A. If I did I don't know it. I will tell you how it was.

Q. All right.

A. When you handle mail and the clerk is in the door you have to be particular that the sacks don't hurt him. Parcels and those things you have to be particular about, and it is against the rules to throw them over into the aisle. You can't do that.

Q. Now, were you here before when we tried the case?

A. Yes, sir.

Q. Was this sack of mail here then?

A. Yes, sir.

Q. I asked you to pick up that sack and throw it and you done it?

A. Sure.

[fol. 216] Q. You can do it now?

A. Do what?

Q. You don't mean to tell the jury that you — not physical man enough to throw this sack of mail, do you?

A. I don't know. I would not say that, but I know that I am not big enough to pick it up and throw it four feet from the truck way over in the aisle, I will not say that.

Q. All right, how many feet can you throw that sack of mail?

A. Just to pick it up and stand and throw it, I guess I could throw it five or six feet. But I did not have to do that.

Q. Did you do that on the other trial?

A. Yes, sir.

Q. You throwed it here in the court room on the other trial?

A. Yes, sir.

Q. You can throw it now, can you?

A. Yes, sir.

Q. Isn't it a fact that you handle sacks of mail with a little swing in order to get them started?

A. Let me show you.

Q. Show how you handle those sacks of mail?

A. I pick it up like this—I pick the mail up like this. This is the way I handle the mail. Pick the mail up in the door like that.

Q. Let me see you throw it? Just throw it?

A. I use my judgment. I can pick the mail up and throw it as I feel like it.

[fol. 217] Q. Let's see how far that is?

A. I can throw it as far as I want to throw it, but I don't know.

Q. For the benefit of the record how far did you throw that sack of mail?

A. About five or six feet.

Q. Step it and see. See how many steps it is. You know the length of the step you make?

A. I make about three. About three steps.

Q. You stepped about three foot to the step did you?

A. Yes, sir.

Q. That would make nine feet, and that would throw it through the mail car?

A. Yes, sir; but I could not throw it with that rod up there to save my life.

Q. You put some of these ninety sacks of mail in there under this rod?

A. Yes, sir; all under that rod.

Q. You tell this jury that you have been there seven years and you never have moved this rod one single time in putting the mail into these cars?

A. I have been there six or seven years and I have never moved that rod in the whole time that I have been there. If you take that rod out it will fall down.

Q. Do you tell this jury under your oath that you can't take the back end and pull it out of the socket and push it over to the other side far enough until the sharp end of the [fol. 218] rod overbalances the big end that holds it in the socket at the side of the door?

A. I will bet you my life on that.

Q. Well, let's get back to the question of these sacks. You will admit to the jury that you are physically able to throw that sack?

A. Yes, sir.

Q. You can stand on the platform of one of those trucks and throw the sack plumb through the mail car out on the other side? You are physically able to do that?

A. If the rod was not up there I could throw them out on the other side if I wanted to.

Q. If you throwed it with enough force it would go clear across the mail car? You could stand here on the platform of your truck and throw it far enough that it would go plumb out the mail car?

A. I can throw it sure, but that is not the question. Like this is the truck, and this is the car door, there is a man working in there.

Q. Well, what do you mean by that?

A. Common judgment tells me not to throw the sack on the man working in there.

Q. What keeps you from it?

A. That white man keeps me from it. He is working in there and I am working out here, and I would be crazy to throw the sack in there where that white man is working at. He would run me off that truck.

[fol. 219] Q. You know that you would hit a man by doing it?

A. Certainly I know it.

Q. You knew if you throwed it it would hit a man?

A. Certainly I do.

Q. Now, this sack here weighs 123 pounds, the testimony shows, and that they will hold about 125 pounds. Now, this is about the normal sack of a No. 2 sack, isn't it?

A. Yes, sir; that's a No. 1.

Q. A No. 1?

A. Yes, sir.

Q. That's the same kind of material that all of those mail sacks are made out of that are used in the service?

A. Yes, sir.

Q. That is like those that you handle?

A. I handle them bigger than that.

Q. You handle them bigger than that?

A. More than that.

Q. You told Mr. Bozeman a few minutes ago that you were loading this train that day that Mr. Denton got hurt. Now, Jim, if you did not know anything about Mr. Denton getting hurt, as you say you didn't, how do you know that you were loading the train at the time Mr. Denton claims that he was hurt?

A. I didn't know it until the claim agent sent for me to come over to his office. He asked me if I was working on Thursday and I told him, Yes, sir; and he said, "You hurt a man," and I said, "They have got me accused wrong." [fol. 220] Q. How long was that after Mr. Denton is supposed to have got hurt was it that the claim agent said that to you?

A. I suppose about two months or a month, I can't say.

Q. Do you mean to say that you knew nothing about this for two months?

A. Two months or a month.

Q. Then you looked back, and turned back in your mind and you happened to know that you loaded this particular train two months ago?

A. I know if anybody loaded it I loaded it on that Thursday. I had been loading that train for six or seven years.

Q. Did you check the record of the days you worked to see whether or not you loaded that train on that Thursday?

A. The white man told me that it was on Thursday, and I said, "You have got me accused wrong." And he said that Mr. Tolbert told him that I was on that day and loaded that train. And then I said, if that white man says that it was on Thursday, then I says, "I am that man."

Q. Who was it that sent you to load that train?

A. Mr. Tolbert.

Q. What is his first name?

A. I don't know. That is all I know.

Q. Mr. Tolbert?

A. Yes, sir.

Q. Was he your boss?

A. Yes, sir.

Q. Was he boss of the mail porters?

[fol. 221] A. Yes, sir.

Q. Jim, you say that catcher was too low for you to throw the sacks under?

A. Yes, sir; you couldn't throw it.

Q. All right, how high is that catcher?

A. Well, that catcher comes straight across like I am standing straight up like this, this catcher comes right along here.

Q. Then, Jim, if it comes along there when you are standing up, and you get the sack just like you did awhile ago, you could put that sack under the catcher and have plenty of room couldn't you?

A. But it has got another plate coming down like that.

Q. You mean that it has got a catcher arm that comes across like this and then another part that comes down like this?

A. Yes, sir.

Q. Inside the bottom of the car?

A. It comes down angling, worse than that. It comes down like this, and you can't put but one sack like that under, under this side, and you can put two sacks on this side, big sacks.

Q. Then, Jim, if you had two big sacks in the door just like that one, lying side by side, you would still have room to throw another big sack under the catcher?

A. You can't do it.

Q. Why?

A. Because you got to pick the sack up, here, like this.

Q. That catcher arm is a little piece from the wall?

A. Now, this is the door and this is the catcher, just like this, and I put it this way.

[fol. 222] Q. When you reach down to get your sack and give it a swing, the catcher is this side of the door? The catcher is neared you than the door?

A. Yes, sir.

Q. Then, of course, you swing that sack, you swing it and it goes under the catcher before it gets to the mail, does it, because the catcher is nearer the train than the mail?

A. The way you have to push that is the way that I push it. You see, I have to push it bent over, and you can't naturally pitch it in bent over like that. All you can do is to lay it up in the door, you see.

Q. Jim, is this a correct drawing of the mail car?

A. I don't think so.

Q. Can you draw one better than that?

A. No, sir.

Q. When Mr. Denton got hurt, you were not looking in the door?

A. I don't know nothing about him getting hurt.

Q. You don't know whether there were any sacks in the door or not, do you?

A. I didn't look in the door. I couldn't tell. I will not say, for I didn't know nothing about it. I didn't hear him say nothing about being hurt, you know, and nobody told me anything until the claim agent sent for me, and that was the first that I knew of it.

Q. Three or four or five or six sacks is just a little mail, is it—that is a light mail, as it goes on the train?

[fol. 223] A. Yes, sir.

Q. Can't you take three or four sacks like those sacks lying in the door, and still have ample room to throw a big sack like that under the catcher?

A. No, sir.

Q. How much room would it take to throw the sack through the catcher?

A. All of it.

Q. In other words then, the sack is as big as the door? Is that right?

A. It is not as big as the door, but you have got to place them kind of sacks, big sacks like that, you have got to place them one by the side of the other, one by the side and the other up by it in the door, and the door is a small door like that.

Q. You tell the jury that you can't throw a sack of mail through there under the catcher?

A. Not the way it was laying down in the door—the way we lay them sacks in the door.

Q. Well, the catcher is about this high from the floor?

A. Yes, sir.

Q. And that would be about four feet high?

A. Yes, sir; about that.

Q. Couldn't you pile the mail in the door two feet high and still have room, that much room through which to throw the sack of mail under the catcher on the side back where the handle of the catcher is sticking up?

[fol. 223½] A. No, sir; I will not say that you could not and I will not say that you could do it.

Q. I just asked you if there would not be room enough.

A. There is room enough, but I didn't throw them. I can't throw no sack in there. You are not supposed to throw them that way. You are supposed to put them in the door and the clerk to take them out.

Q. Isn't it a fact that you are not supposed to throw it?

A. No, sir.

Q. And, of course, if you make a mistake and do throw it, one would be afraid of getting fired?

A. I would not fire it.

Q. If you would make a mistake and throw it, then you would know that you had done something wrong?

A. Yes, sir.

Q. And you would be afraid of getting fired if you was to do it?

A. Certainly, if you would hurt one of the men, here. Yes, sir; it would go hard with you.

Q. Hard on you?

A. Yes, sir; of course it would, them men standing in there with a big gun.

Q. You testified when this case was tried before, didn't you?

A. Yes, sir.

Q. Didn't you testify then that the next day after this happened that you heard around the depot there that a man got hurt on 203?

[fol. 224] A. No, sir; I never heard of it until the claim agent sent for me.

Q. That is all.

Redirect examination.

By Mr. Bozeman:

Q. Jim, when you roll a truck of mail up to the door to load it, and one of the mail clerks tells you—one of the clerks who is receiving it into the car tells you that you are loading it too fast and to hold up, do you obey him?

A. I obey them men in the car, for them men around there are the boss of the car and I obey him, and if he tells me that is enough and to get away, I don't put no more in there. I don't put another sack in there.

Q. You do that?

A. Yes, sir.

Q. You do whatever the man, the mail man, tells you to do?

A. Tells me to do; yes, sir.

Q. If you have two or three different kind of mail on your truck, pouch mail, sacks of mail, boxes, parcel post, and you start to loading one kind, say you start to loading a sack of mail first, and this man tells you to wait, Jim, "I want you to load that pouch mail first," do you have to do that?

A. I have to do just what that man tells me to do, the man standing in the car.

Q. Whatever the man in the car tells you to do, what is what you do?

A. Yes, sir.

[fol. 225] Q. You do that all the time?

A. Yes, sir.

Q. The man in the car there is your boss so far as loading that mail?

A. As long as I am loading that car, he is my boss.

Q. Did anybody ever instruct you otherwise than that? Did anybody ever tell you any different from that?

A. Nobody else but them men. They tell me how to load, that they got enough, and they don't want this sack and that sack and take it back and put it in the storage car, I take it and put it in the storage car.

Q. Now, in loading these big sacks, you showed the jury how you put them in under the catcher arm?

A. Yes, sir.

Q. Now, come here and show the jury again how you put the big sacks in that car?

A. Take them like this and set them up in the door and push them over like this. We have to pitch those big sacks up by main strength and put them in like that.

Q. Sort of like a roll, is that a fact? Roll them off?

A. We don't pick them up much. Sort of like this and roll it, that is the way we handle that thing every day of my life.

Q. That's the way you did it this time?
A. Yes, sir.
Q. That's all.

Recross-examination.

[fol. 226] By Mr. Gipson:

Q. You don't have any personal recollection of having seen Mr. Denton in the car or anything at all on the day that he is supposed to have got hurt?
A. I did not know Mr. Denton. I did not know him.
Q. All you know is that you served the train on this Thursday?
A. Yes, sir.
Q. And you don't remember anything unusual happening at that particular time?
A. No, sir.
Q. That is all.

(Witness excused.)

[fol. 227] By Mr. Bozeman: I offer in evidence now a certified copy of Sections 1290 and 1293 of the Postal Laws and Regulations, these being the Sections I have been asking some of the witnesses about, and will ask that they be marked Exhibit No. 1, defendant.

Document handed to the Court Reporter, marked Exhibit No. 1, Defendant.

Objected to.

The Court overruled the objection as to Paragraph 2 of Section 1293, and sustains the objections as to Paragraph 1 of Section 1293.

Exception.

DEFENDANT'S EXHIBIT 1

Said Exhibit No. 1, defendant, being in the words and figures as follows, to-wit:

"Section 1290. Where a mail messenger is employed by the department and a railroad representative is on duty, the railroad company will, not be required to receive mails from and deliver them into the mail cars or place the mail

on mail cranes if the volume of mail is relatively small and can be readily handled by the department messenger by hand on one trip. At such a point where mail trains arrive at times where there is no railroad representative on duty, the railroad company will not be required to place the mails on or to take them from trains, and if trucking is necessary under such circumstances the railroad company shall provide and render accessible to the messenger the necessary trucks. The department reserves the right, however, in both cases to require the performance of this service by [fol. 228] railroad employees at any time during the 24-hour period, and Railway Mail Service officials will notify the railroad when any such service is required.

2. When the department mail messenger can not wait for the delayed train without delaying the other mails, the railroad company will be required to take charge of and dispatch the mails for the delayed train and will be responsible for the inward mail until it is delivered to the messenger or other authorized representative of the department.

3. In cases where the company's agent cannot or will not give the mail messenger or other carrier of the mail advance information as to the time the train will arrive, the messenger need not wait for the train beyond its schedule- time of arrival, and where the train is reported as being more than two hours late, the messenger need not wait for the arrival of the train. In each case the messenger may deliver the mail to the company's agent, or other representative, whose duty it shall be to dispatch the mail by proper train and to retain custody of the incoming mail, if any, until it is called for by the messenger. Where the train is actually more than two hours late, although reported to arrive within two hours of schedule time, the messenger should wait for the arrival of the train, but need not wait more than two hours, at the expiration of which time he may turn the mails over to the agent, whose duty shall be the same as in other cases. At a point where there is no telegraph office or other means of ascertaining when the arrival of the train may be expected, the messenger may not turn the mail over to the agent until two hours after the train is due to arrive. In all cases

where mail is regularly turned over to the company's agent [fol. 229] for dispatch the company becomes responsible for its proper handling, and the messenger shall call for and deliver the incoming mail to the post office immediately after the arrival of the train, unless the train arrives at a late hour of the night and the post-office is closed when the incoming mails may be disposed of as provided for in the section next following.

Section 1923. Where mail cars are not placed at points accessible to the vehicle of mail messengers or other department carriers, the railroad company shall be required to receive the mails from and deliver them to the messenger or other carriers at points accessible to their vehicles, except as provided in Section 1290.

2. Railroad companies shall furnish the men necessary to handle the mails, load them into and receive them from the doors of the railway post office cars, and to load and pile the mails in and unload them from storage and baggage cars, under the direction of the transfer clerk, or clerk in charge of the car, if one is on duty, except as provided in Section 1290. Mails intended for delivery to postal clerk shall never be placed in a postal car unless there is a clerk on duty to receive and care for them."

[fol. 230] Mrs. CHARLES B. MCINTOSH, called as a witness on behalf of the defendant, was sworn and testified as follows:

Direct examination.

By Mr. Bozeman:

Q. This is Mrs. Charles B. McIntosh?
A. Yes, sir.
Q. Mrs. McIntosh, you are a stenographer, are you?
A. Yes, sir.
Q. State whether or not you aided Mr. J. L. Barton, court stenographer, in reporting the testimony that was offered on the trial of the case of Jesse H. Denton against Jim Hunter and the Yazoo & Mississippi Valley Railroad at the September term, 1929, of the circuit court of this county?
A. I did.

Q. State whether or not Mr. Ike Worthington testified in that case as a witness for Mr. Denton, the plaintiff?

A. Yes, sir; he did.

Q. State whether or not you took down the testimony of Mr. Ike Worthington on the trial in shorthand?

A. I did.

Q. And whether or not you afterwards transcribed it?

A. I did.

Q. When was that testimony typed out, about when?

A. The 21st day of December, 1929, I completed it.

Q. After it was typed out, did you certify to the accuracy and correctness of it as you typed it out?

A. I did.

[fol. 231] Q. I show you pages 214 to 231 inclusive in this and will ask you whether or not that is the transcript of the testimony given by Ike Worthington at that trial?

A. It is.

By Mr. Bozeman: Now, if your Honor please, it has been proved by several witnesses that Mr. Ike Worthington is dead, having died since the last trial, and I now desire to offer in evidence this testimony of Mr. Worthington.

Objected to.

Q. At any time before you took this testimony, did you take the oath as assistant stenographer in the Court before Mr. Rush, the circuit clerk?

A. Yes, sir; I went to Mr. Rush's office and took the oath before him.

Objected to.

Q. This testimony starts off: "By Mr. Gipson." Is that the man whom is now objecting to these questions?

A. Yes, sir.

Q. Is that the same Mr. Gipson that is here now objecting?

A. Yes, sir.

Q. Mr. Gipson is attorney for Mr. Denton?

A. Yes, sir.

By Mr. Bozeman: We offer the testimony.

Cross-examination.

[fol. 232] By Mr. Gipson:

Q. During the trial of thise case before, were you here as the official court reporter, or were you here practicing to see if you could report this case?

A. I was here as assistant to Mr. Barton.

Q. What assistant to Mr. Barton,—just during this trial?

A. Just like in this trial or any one.

Q. Is there any assistance that you could render Mr. Barton while taking the testimony in this case, or any other case, is there any assistance you could actually render him?

Objected to.

A. If you mean as to any assistance to him, he would have to answer that, but as to my part, I think I was of assistance to him.

Q. Now Mr. Barton, the one who is reporting this case today is the one you were assisting on that day, is he, Mrs. McIntosh?

A. Yes, sir; the same one.

Q. Well, he took this case before and he is the official stenographer now, is he?

A. Yes, sir.

Q. Did you sit at the same table with Mr. Barton at the other trial?

A. Yes, sir.

Q. Who was paying you to take that?

A. There was no one paying me, Mr. Gipson.

[fol. 233] Q. Who was paying Mr. Barton, if you know?

A. I imagine he was drawing his salary as official reporter.

Q. Do you mean to tell this court that you sat down there and took the testimony down and then went, and transcribed it, put it in type form, all without pay?

A. I was paid by Mr. Barton for transcribing it.

Q. Mr. Barton paid you for transcribing it?

A. Yes, sir.

Q. Do you know who furnished the money to Mr. Barton?

A. I don't know. All I know is that Mr. Barton gave me a check for doing the work for him.

Q. How much did he pay you, Mrs. McIntosh, for transcribing the testimony in this case?

A. I can't tell you. All I can say is Mr. Barton gave me a check for it. I was doing quite a great deal of work for Mr. Barton at that time, and he paid me several sums in different cases, and I really could not tell you what the amount was in this one particular case.

Q. Give your best judgment?

A. I can't tell you. I have no judgment in the matter.

Q. You don't know whether it was $10.00 or $75.00?

A. I know it was not $10.00, and I know it was not $75.00.

By Mr. Gipson: I have no objection to Mr. Barton refreshing your recollection about it, if he cares to do it.

By Mr. Barton: I don't recall how much I paid her, but am sure it was not enough.

[fol. 234] By Mr. Gipson: Do you recall whether or not you remained in the court room during the entire time of the trial of this case before?

A. Yes, sir; I was here all during the trial, Mr. Gipson.

Q. You took the testimony of every witness?

A. Yes, sir.

Q. Is there any error or mistake in the transcript of your notes there?

A. No.

Q. Is there any place there where you really don't know whether it is correct or not in the transcript of certain words?

A. No; it is correctly written.

Q. Did you have any trouble transcribing your notes?

A. No.

Q. What experience, Mrs. McIntosh, have you had in this kind of work?

A. I attended the circuit court for about a year this past year, at all of the sessions that came up I was present and reported the cases.

Q. Did you transcribe your notes or Mr. Barton's notes?

A. I transcribed my notes.

Q. You do both, do you?

A. No.

Q. You can not transcribe his notes?

A. No, I can't.

Counsel for plaintiff object to the introduction of the testimony of Ike Worthington being read to the jury.

[fol. 235] The court overruled the objection, and the testimony of the said witness is marked Exhibit No. 2 for the defendant, and is in the words and figures as follows, to-wit:

DEFENDANT'S EXHIBIT 2

"Mr. IKE WORTHINGTON, called as a witness on behalf of the plaintiff, was sworn and testified as follow:

Direct examination.

By Mr. Gipson:

Q. This is Mr. Ike Worthington?
A. I. C.
Q. I. C. Worthington?
A. Yes, sir.
Q. What do you do for a living, Mr. Worthington?
A. I am a railway postal clerk.
Q. What is your age?
A. I am fifty-four.
Q. How long have you been employed by the United States Government as a railway postal clerk?
A. Nearly twenty-six years.
Q. Are you what we call, term, a clerk-in-charge?
A. Yes, sir.
Q. What's your regular assignment, or where do you run?
A. From here to Shreveport.
Q. Do you run from Jackson, Mississippi, on that route?
A. Yes, sir.
Q. Jackson, Mississippi, is one of your regular stops going and coming?
A. Yes, sir.
Q. That is what you term a junction point, is it not?
[fol. 236] A. Yes, sir.
Q. At junction points do you usually and customarily unload and load more mail at the junction points than the ordinary points?
A. Yes, sir.
Q. Mr. Worthington, are you related by blood or marriage to Mr. J. H. Denton, the plaintiff in this suit?
A. No.

Q. On or about the 21st day of April, 1927, was you and Mr. J. H. Denton working on the same train in the same railway post-office?

A. Yes, sir.

Q. What place on that train was you then holding as to whether or not you was clerk-in-charge or second man?

A. I was clerk-in-charge.

Q. Was Mr. Denton, as you call it, "second clerk" in the train?

A. Yes, sir.

Q. You had charge of that railway post office?

A. Yes, sir.

Q. Mr. Denton, as the clerk in charge of that train, do you make what is called a trip report, showing mail handled, and so on; details of the trip and so on?

A. Yes, sir.

Q. Have you that trip report with you?

A. Yes, sir.

[fol. 237] Q. Let me see it, please?

(Witness hands the report to the lawyer.)

Q. Is this the trip report—were you going from Meridian to Shreveport that day?

A. Yes, sir.

Q. Mr. Worthington, what time of day was you scheduled to leave Meridian, Mississippi, on that date?

A. Why we were due to leave here at 11:55 now. I don't remember whether we did on that day or not.

Q. Presumably that there has been a change of schedule of just a few minutes?

A. Yes, sir.

Q. Do you recollect whether you left Meridian on time or not?

A. No, sir; I don't.

Q. Will your trip report show that information?

A. Yes, sir.

Q. At this particular time, on April 21, 1927, do you recollect whether or not the Mississippi River flood stages were then on?

A. Yes, sir.

Q. Do you recollect whether that caused an extra amount of mail to be re-routed so as to reach your train?

A. To the various cities west of the Mississippi River; yes, sir.

Q. Mr. Worthington, this car you left here on was an apartment car, approximately sixty feet long?

A. Yes, sir.

[fol. 238] Q. Did you have a partition in the center, or near the center?

A. That's supposed to be in the center.

Q. When you left Meridian, was you using both ends, or just working one and rather than using both? Do you remember?

A. Yes, sir.

Q. Your recollection is that you were *a*sing both?

A. Yes, sir.

Q. When you got to Jackson, Mississippi, did you see Mr. Steve Webb on that occasion?

A. Yes, sir.

Q. What occasion did you have to see Mr. Steve Webb there?

A. Why, he's due to deliver registered mail to our train.

Q. Did he come inside the railway post-office to do that?

A. Yes, sir.

Q. Was there any way, Mr. Worthington, to pass from the railway post-office into the baggage or storage compartment?

A. Yes, sir; unless that hole was blocked.

Q. There is a scuttle hole?

A. Yes, sir.

Q. Do you recollect whether or not at Jackson, Mississippi, that you had a lot of extra pouches that had been detoured on account of high water, loaded into that storage car at Jackson?

A. Yes, sir; we had some. I don't know how many.

Q. Mr. Worthington, won't your duties require you at Jackson, Mississippi, under those conditions, to supervise or direct or see that these locked pouches carrying first [fol. 239] class mail that had been detoured, was loaded into the baggage car storage?

A. I informed Mr. Webb that we wanted them in there.

Q. Wasn't it necessary for you to make that record?

A. Yes, sir; you have the record.

Q. Do you remember whether you were performing that duty before or after you exchanged mail with the transfer clerk, Mr. Steve Webb?

A. As well as I remember, we signed for the registers before the mail was loaded.

Q. Was it your customary way of doing business? The transfer clerk boards the train and exchanges registers, and then you do whatever work there is to do?

A. Yes, sir.

Q. Would your trip report indicate whether or not that happened on that occasion?

A. No, sir.

Q. Would your trip report indicate what day of the week it was, whether it was the 21st day of April, 1927, or not?

A. Yes, sir.

Q. Have you referred to it to ascertain what day of the week it was?

A. No, sir.

Q. Will you please refer to your trip report and tell us what day of the week that was on?

A. That was on Thursday.

Q. Now, was that record that you hold in your hand made up that day? You make them up daily when you are on the run?

[fol. 240] A. This copy was made next morning.

Q. You make a daily trip report of your run?

A. Yes, sir.

Q. What do you do with that report?

A. I get the duplicate I made on the run.

Q. Your regulations require you to keep a copy?

A. Yes, sir; for two years.

Q. What do you do with the original? Who do you turn that to?

A. The chief clerk.

Q. That is Mr. J. M. Combs?

A. Yes, sir.

Q. That paper you hold in your hand—that is the instrument you turn into the chief clerk's office?

A. Yes, sir.

Q. Now, refer to that, please sir, and tell us whether or not when you left Jackson, Mississippi, to cross the Mississippi River, if you had your storage cars full of storage mail?

A. Well, the trip report shows we had thirty feet.

Q. That thirty feet is half of the car, is it not?

A. Yes.

Q. What is the approximate number of average mail sacks and pouches it takes to fill that thirty foot mail car?

A. Well, if full, there are supposed to be five hundred and forty, but anything over fifteen feet you call thirty feet.

Q. Five hundred and forty?

A. Anything over fifteen feet you call thirty feet.

[fol. 241] Q. That would take about two hundred and eighty bags to fill it half full?

A. Two hundred and seventy.

Q. Do you remember on this particular occasion just how full that car was?

A. No, sir.

Q. Mr. Worthington, how long had you been—left Jackson, Mississippi, in point of time before you learned that Mr. Denton had been injured at Jackson?

A. Well, it must have been somewhere between two and three hours.

Q. What was the first thing that turned your attention, or directed your attention to this injury?

A. I went back to get me a drink of water, and he had his knee propped up on the board.

Q. What, if anything, was he doing to his knee?

A. He was working mail.

Q. Had one of his knees propped up like this?

A. Not in that position.

Q. Well, how?

A. In this way (indicating).

Q. Did you later see him administering with a hot towel or something like that?

A. I don't remember.

Q. At Jackson, Mississippi, on this occasion, what percentage would you say that your load of mail was increased over and above normal on this occasion on account of the flood stages?

A. Well, I don't know whether you have reference to working mail or storage?

[fol. 242] Q. All of it?

A. I suppose twice, or more.

Q. Well, now, the working mail? How much would you consider it increased? What percentage?

A. Well, about the same.

Q. About one hundred per cent increase?

A. Yes, sir.

Q. Mr. Worthington, was Mr. Denton—did he stay in the car until you got to Shreveport?

A. Did he stay in the car?

Q. He stayed on the train until you got to Shreveport?

A. Yes, sir.

Q. That was each one's destination?

A. Yes, sir.

Q. Now, when you left Jackson, Mississippi, wasn't you what mail clerks commonly call "stuck"? In other words, wasn't you behind with your work?

A. Yes, sir.

Q. And when you are behind with your work, doesn't it put extraordinary effort on each mail clerk to try to work off the accumulated mass of mail?

A. It does.

Q. That being true, you didn't have much time, if any, to converse with each other until you just happened to be throwed together in the car? Is that true?

A. Yes, sir.

Q. And Mr. Denton had the—was working on the table back in the other end of the car?

[fol. 243] A. Yes, sir.

Q. You recollect whether or not that you had any conversation at all with Mr. Denton from the time you left Jackson, Mississippi, until the time you went back there to get a drink of water and saw him holding up his leg?

A. I don't remember whether I had or not.

Q. Then the first conversation you remember having with Mr. Denton after you left Jackson is the time you learned he had his leg hurt?

A. Yes, sir.

Q. Was he able physically to perform the usual duties of a mail clerk under those conditions from there all the way into Shreveport, or just able to perform a part of his duty?

A. I could not say as to that. I didn't have much time to pay much attention to him out of all the work that I had to do.

Q. Were you overworked yourself, were you, Mr. Worthington?

A. Yes, sir.

Q. Now, did Mr. Denton's injury cause him to complain much and sit down some on the way to Shreveport that day?

A. I couldn't say. I don't remember it, whether he sat down or not.

Q. What does your trip report show there with reference to the extra amount of mail that you delivered unworked at Shreveport, Louisiana, when you arrived at your destination?

A. It shows I delivered them sixty packages of letters and eight sacks of newspapers.

[fol. 244] Q. Sixty packages of letters?

A. Sixty packages of Texas letters, and eight sacks of Texas letters.

Q. Unworked?

A. Yes, sir.

Q. Now, Mr. Worthington, is that less or more than the usual and ordinary amount of mail that you deliver unworked?

A. We don't ordinarily deliver any mail there unworked.

Q. On this particular occasion you worked how long in the yards in the car at Shreveport after your train was set out?

A. I don't know whether we worked there or not.

Q. See if your trip report reflects that?

A. I don't show it.

Q. Do your trip reports show that you were off at certain hours?

A. Yes, sir; it shows that we were off at 12:25 A. M.

Q. What was the time that your train was due in Shreveport at that time?

A. Ten forty, I think.

Q. That would make you do about an hour and fifty minutes over time work that night in the car, would it not?

A. That 12:25 is the time that the train arrived in Shreveport.

Q. What time does the trip report show you got off duty that night?

[fol. 245] A. That's not shown, but I didn't stay in the car.

Q. You don't recollect how long it was necessary for you to stay in the car in order to get your mail into shape to surrender it?

A. No, sir; we don't work any letters after we get there. We turned over this mail unworked.

Q. You don't remember whether you did some work after you got in the yards or not?

A. Well, it's necessary to get ready and get off and handle the mail.

Q. Well, now, the train was due in there at ten forty that night?

A. Yes, sir.

Q. Now, do you recollect whether this extra two hours was spent on the road by the train leaving two hour- late, or whether it made up this time?

A. I mean this 12:25, that's the time that the train arrived at the station at Shreveport?

Q. Do your records show that, or is that just your recollection?

A. That's my record, at what time we arrived there.

Q. That gave you then about an hour and forty-five minutes extra time, the train being late, in which to work out the extra accumulated amount of mail?

A. Yes, sir.

Q. And if you had run in the station on time, when due there, you would have as much additional mail to be tendered un-worked as you could work in about an hour and forty five minutes?

[fol. 246] A. Yes, sir.

Q. But after you worked that hour and forty-five minutes, the train coming in late, you still had to deliver a lot unworked?

A. Yes, sir.

Cross-examination.

By Mr. Bozeman:

Q. About how wide is the mail car inside? About nine feet?

A. I believe that is the width—about that.

Q. Something like nine feet wide?

A. Yes, sir.

Q. Now, the mail that is stored in these cars that you are working in at Jackson—you are not working in a storage car at Jackson—anything that happens in a storage department—what do you call that front compartment? What do you mail men call it?

A. Mail car.

Q. You work in the mail car?

A. Yes, sir.

Q. That mail that comes into the car, the sacks of mail like you get, is it customary to store it right opposite the door, or where do you put it? In the end of the car?

A. Stored all the way on both sides.

Q. Back from the door?

A. Yes, sir.

Q. You were in the car, in this car with Denton at Jack-
[fol. 247] son on the 21st day of April, 1927, when he claims that he was hurt there by the mail sack, as the clerk in charge of that car?

A. Yes, sir.

Q. You were?

A. Yes, sir.

Q. You had exchanged, or did exchange there on that occasion, registered mail, with Mr. Steve Webb, the transfer clerk?

A. Yes, sir.

Q. And Mr. Denton was taking the mail that was being loaded in the door and placing it in the proper places at the end of the car while you were looking after your other duties, after these other duties, were you?

A. Yes, sir.

Q. Now, you say there was an extra amount of mail on account of the flood conditions?

A. Yes, sir.

Q. That condition had continued for sometime before had it?

A. I think that it had been about—I don't remember, but I think it had been about a week or ten days.

Q. You don't mean to say that one day's business had congested that mail on account of the flood conditions? You don't mean to say that one day's business did that?

A. No, sir.

Q. The mail clerks and everybody—everybody knew about that, that had existed, and the amount of mail that had to be handled?

A. I did, and I suppose that others did.

Q. There was no reason why the others should not know it?

[fol. 248] A. No.

Q. Now, you were at Jackson on the occasion while this train No. 203 was standing there and while the mail was being loaded into the mail car, and while Denton was taking it away, and you did not hear anything that was out of the unusual did you?

A. No, sir.

Q. You did not see any sack of mail thrown in there on and against Mr. Denton?

A. No, sir.

Q. You did not hear Mr. Denton make any complaint there at Jackson of his having been hurt at all, did you?

A. No, sir.

Q. The first you knew at all, and you were a mail clerk in that car, and the man over Denton, the first you knew that Mr. Denton claimed to be hurt at all at Jackson was two hours afterwards when you were away on the other side of the Mississippi River, was it.

A. We were across the river. I don't know how long.

Q. From where you were along there it must have been fully two hours after you left Jackson, was it?

A. Yes, sir.

Q. Now, the first you knew of it, you went back there to get a drink of water, and you saw Denton there with one of his feet propped up?

A. Yes, sir.

Q. And your testimony is that he was working along something like that?

A. Yes, sir.

[fol. 249] Q. Did you ask him what was the matter?

A. No, sir; I did not. He spoke to me, I think, without me asking him.

Q. What he said was, "I believe I got my leg hurt at Jackson," didn't he?

A. Well, he said that he had a bad leg and he believed he hurt it loading mail in Jackson.

Q. He said that he had a bad leg and he believed he got it hurt at Jackson?

A. Yes, sir.

Q. And you all worked on to Shreveport?

A. Yes, sir.

Q. And you got in there late at about 12:25?

A. Yes, sir.

Q. And he got off the train. Did Denton make the trip back to Meridian with you?

A. Yes, sir.

Q. From Shreveport to Meridian the next day?

A. Yes, sir.

Q. Worked his way back?

A. Yes, sir.

Q. So, although you were in the car, and the man in charge, you saw or heard of anything unusual being done that caused Mr. Benton to be hurt?

A. No, sir.

Q. That is all.

[fol. 250] Redirect examination.

By Mr. Gipson:

Q. Does your trip report show there how many first class mail — was in the baggage or storage end of the car?

A. No, sir.

Q. It was your duty to see or check and make a record of those first class pouches placed in the storage end of the car at Jackson, was it not?

A. I did not get to them until I was over at Shreveport.

Q. Whose duty was it to see whether or not the detoured first class mail was loaded properly at Jackson?

A. I called on Mr. Webb, the transfer clerk, to have it loaded there.

Q. Do you sometimes go from the railway post-office end of the car through the scuttle hole into the baggage part of the car when you have a lot of mail in the baggage car?

A. Very seldom. Sometimes.

Q. Do you know whether or not you did this on this occasion at Jackson, Mississippi?

A. No, sir; I don't remember.

Q. You don't remember whether you did or not?

A. No, sir.

Q. Mr. Baker made the return trip from Shreveport to Meridian, did he?

A. I don't remember whether he came from Shreveport or not—yes, he came from Shreveport.

Q. You picked up Mr. Baker at Shreveport?

A. Yes, sir.

[fol. 251] Q. And brought him with you to Meridian?

A. Yes, sir.

Q. Mr. Baker, under normal conditions, was not supposed to be in the car with you coming back to Meridian?

A. He was riding out on account of trouble with the river.

Q. He had worked over on the earlt morning train, and came back with you later?

A. He must have gone there on 207 it is now.

Q. Now, he was what you call "dead heading" back to Meridian, was he?

A. Dead heading?

Q. Yes, sir; he was not assigned to any active duty on that train coming back?

A. He was assigned as a member of the crew; yes, sir.

Q. Well, now, having an extra man coming back, Mr. Worthington, did Mr. Denton do the usual amount of work coming back to Meridian, or did he show to be weakened or lame?

A. I can't say as to that. I think Mr. Baker helped him most of the way back.

Q. He had a man to help him load that heavy mail and work mail all the way back?

A. Yes, sir.

Q. Mr. Baker had been in the mail service for quite awhile, had he?

A. And Mr. Baker, of course, knew how to do the class [fol. 252] of work that Mr. Denton was required to do on the train?

A. Yes sir.

Q. Since you returned with Mr. Denton to Meridian on that train, you have never since that time see- Mr. Denton doing duty as a railway postal clerk, have you?

A. No, sir.

Q. That's all."

The defendant rests.

MOTION FOR INSPECTION BY JURY

Mr. Gipson: Now comes the plaintiff and moves the Court to take the sheriff and the jury and the plaintiff's and defendant's attorneys and go to the Union depot, a distance of three blocks from this building, and go and view and

inspect a car constituting a United States Railway Post Office, and the door of the same, and the catcher across the door, in order that the jury may have the benefit of seeing this door and the catcher and how it works, and where there are mail sacks and mail trucks and platforms similar to the ones in Jackson, Mississippi, where the injury occurred, where the trucks can be placed by the side of the mail car, and where Jim Hunter, one of the defendants, and the mail porter can be placed on the truck by the side of the mail car and where the jury can see for themselves the location of the catcher across the door, and how high [fol. 253] it would be where Jim Hunter was standing on the truck.

ORDER OVERRULING MOTION FOR INSPECTION BY JURY

By the Court: I never heard of a motion like this in rebuttal. The witnesses on both sides have given their version of it. I might have sustained it had you made it in the opening. It is ninety-six miles from here to Jackson. The motion will be overruled.

Plaintiff excepts.

By Mr. Gipson: I would like for the record to show that it is 4:42 by the Court House clock at this time.

Whereupon the plaintiff offered and introduced the following testimony in rebuttal:

W. B. ALLEN, called as a witness on behalf of the plaintiff in rebuttal, was sworn and testified as follows:

Direct examination.

By Mr. Gipson:

Q. State your name to the jury?
A. W. B. Allen.
Q. What do you follow for a living?
A. Railway Postal Clerk.
Q. Are you a brother to Emory Allen—G. E. Allen, the county traffic policeman?

[fol. 254] A. Yes, sir.

Q. How long have you been a railway postal clerk?

A. About twenty-one years.

By Mr. Bozeman: He has been sitting here in the court rool all during the testimony, and I object to his testifying now.

Overruled; exception.

Q. Are you familiar with the catcher across the mail car door of a railway post office, how it works?

A. Yes, sir.

Q. Did you ever see one of them where the big end of it is took out, or what they call the back end and pushed forward in order to clear the door?

A. Yes, sir.

Q. Will they stay there, or will they fall?

A. They will stay there.

Q. Is it unusual at all to take them down when you are loading and unloading mail—shove them aside?

Objected to; overruled; exception.

A. No, sir; it is not unusual. It is not always done, but I have seen it done a good many times.

Q. That is all.

Cross-examination.

By Mr. Bozeman:

Q. What route do you run on?

A. Here to Shreveport, 207 and 204.

Q. This catcher arm is a right important attachment to the train is it not?

[fol. 255] A. Yes, sir; to a mail car.

Q. It has to be handled by the mail clerks on the inside of the car, does it not?

A. It does in catching mail.

Q. That is what I mean, in catching mail. That is the purpose of having it there?

A. Yes, sir.

Q. And it has to be handled by the mail clerk on the inside?

A. Yes, sir.

Q. And when the train is running by a station there, forty miles an hour, or whatever it is, and there is a mail pouch on the mail crane, and the mail clerk has got to catch it, he goes to the door and he has to open the door and use it?

A. Yes, sir.

Q. You have to open the mail door?

A. Yes, sir.

Q. And pull the handle from the inside?

A. Yes, sir.

Q. And you have to lean out and look along the side of the train for the pouch so as to catch it?

A. Yes, sir.

Q. And unless the thing is just exactly like it ought to be and fixed right, and all that, it is a dangerous appliance, is it not?

A. There ain't but one way to keep them up there, and that is to keep them locked on each end.

[fol. 256] Q. And if an ordinary common laborer, who had no experience with this thing, would take it and unhitch it and did not put it back, and the clerk went out there to take in the mail with it, he might be killed?

A. He could not catch the mail.

Q. It might knock the thing loose and fly back and kill him?

A. It can't fly back, I don't think; no.

Q. Well, if one end was loose? If one end was loose would it fly back?

A. You can shove it down until the end of the catcher there will fasten in the socket,

Q. That gets it loosened in the back end?

A. Yes, sir.

Q. That would be a dangerous thing, and one that ought not to be fooled with unless an emergency arose or something to require it—it would be a dangerous appliance and liable to kill somebody if it was not fixed right, and it is not customary for that to be slipped in and out by the nigger porters?

A. All right, Mr. Allen.

(Witness excused.)

[fol. 257] A. D. BRENT, called as a witness by the plaintiff in rebuttal, was sworn and testified as follows:

Direct examination.

By Mr. Gipson:

Q. What do you do for a living?
A. Railway postal clerk.

By Mr. Bozeman:

Q. How long have you been in the court room here during this trial?
A. I came up yesterday morning.
Q. Have you been up there during the trial?
A. Not all during the trial. I came this morning about ten o'clock.
Q. Have you been here since then?
A. Yes, sir; up till noon. I came back at two o'clock.

Objected to the testimony of this witness because he has not been under the rule; overruled; exception.

By Mr. Gipson:

Q. How long have you been a railway postal clerk?
A. I have been on the road about twelve years.
Q. What road are you running on please, sir, now?
A. The A. & V.
Q. Is that the old A. & V., now the Yazoo & Mississippi Valley?
A. Yes, sir.
Q. From Meridian, Mississippi, through Jackson?
[fol. 258] A. Yes, sir.
Q. Are you familiar with what is commonly called the catcher that goes across the mail car door to a car constituting the United States Railway Post Office?
A. I am.
Q. Mr. Bernt, can you or can you not loose what we call the back end of the catcher and push it forward the way the train is going or headed so as to make more room in the door to pass mail in and out there with the catcher pushed to the side?
A. You can very easy. Half the time the catcher is not fastened back there with a pin. The pin is out.

Q. When you do that, when you push is forward, will that catcher remain in there and hold or fall out of its weight?

A. It will remain in and hold. It will not fall.

Cross-examination.

By Mr. Bozeman:

Q. You mean the fastener provided there in the ordinary way, where the rear part of the horizontal rod is fastened in this slot or whatever it is there—some kind of a pin or something?

A. Yes, sir; half the time the pin is not put in.

Q. Half the time the pin is not there?

A. Yes, sir.

Q. And you mail clerks go along using a dangerous appliance like that when it is not even fastened in the back end? Do you do that?

[fol. 259] Objected to.

A. We can use it without the pin; yes, sir.

Q. You heard the questions asked Mr. Allen about it, did you?

A. Yes, sir.

Q. You believe, Mr. Allen, what he said about it?

A. About the way it works?

Q. About the questions that were asked him while you were sitting here listening to him when you heard him testify? You agree with Mr. Allen about what he said about it?

A. About what he said about it.

(Witness excused.)

The plaintiff rests in rebuttal.

The above was all the evidence.

[fol. 260] Stenographer's certificate to foregoing omitted in printing.

AGREEMENT AS TO TRANSCRIPT OF TESTIMONY

It is agreed that the foregoing is a correct transcript of the testimony and proceedings. This August 29, 1930.

Bozeman & Cameron, Attorneys for Defendants.

J. V. Gipson, Attorney for Plaintiff.

[fol. 261] IN CIRCUIT COURT OF LAUDERDALE COUNTY

INSTRUCTIONS FOR PLAINTIFF—Filed June 18, 1930

No. 1

The Court instructs the jury for the plaintiff that nine of the members of the jury may agree on a verdict. That is they may agree on the liability and the amount of the verdict. Whatever verdict nine members of the jury may agree upon should be returned into the Court and the same will be received as the verdict of the jury, regardless of what the other three members of the jury may think about the same.

Given.

[File endorsements omitted.]

No. 2

The Court instructs the jury for the plaintiff that as a matter of law the plaintiff, Jesse H. Denton, did not assume any risk by reason of his employment as a U. S. Railway Postal Clerk, of being injured by the negligence of the defendant, Jim Hunter, or either of the defendants.

Given.

[fol. 262] No. 3

The Court instructs the jury for the plaintiff that the defendants had no legal right to handle the mail rough and to throw, pitch or sling sacks of mail into the aisle of the car and thereby endanger the plaintiff, in order to hurry the departure of the train from the Jackson depot, because there was an extra amount of mail to be loaded.

Given.

No. 4

The Court instructs the jury for the plaintiff that this Court has jurisdiction of this cause of action, and that the question of whether or not this court has jurisdiction, is a question of law, and has been passed upon by the Court, and should not be considered at all by this jury; that when

the jury is considering this cause, you must presume and take it for granted that you have jurisdiction of this cause of action, and that you do have a right to try this cause in this court.

Given.

[fol. 263] No. 5

The Court instructs the jury for the plaintiff that the plaintiff, Jesse H. Denton, had a right to expect the defendants to exercise a high degree of care in loading the large amount of accumulated mail at Jackson, Mississippi, on the occasion of the alleged injury and in causing same to be loaded in a safe manner and in the usual and ordinary manner, and in the way same would have been loaded had there not been any extra accumulated mail there.

Given.

No. 6

The Court instructs the jury for the plaintiff that as a matter of law, there was not a joint undertaking between the plaintiff, Jesse H. Denton, and the defendant, Jim Hunter, as the plaintiff had no duties outside of the car constituting the railway post office and the defendant, Jim Hunter, had no duties inside of the railway post office. Jim Hunter's duties ceased when mail was placed in the door of the car constituting the railway post office.

Given.

[fol. 264] No. 7

The Court instructs the jury for the plaintiff that as a matter of law, the defendants are not entitled to any of the benefits of any amounts that may have been paid Jesse H. Denton by the United States Employees' Compensation Commission during his disability, and the jury will, therefore, not consider any amount that has been paid to the plaintiff from any source in consideration of this case as to liability or in reduction of or mitigation of damages in the event you find for the plaintiff, but you should award an amount in one lump sum sufficient to compensate the plaintiff, Jesse H. Denton, for all damages sustained, as shown by the evidence.

Given.

No. 8

The Court instructs the jury for the plaintiff that as a matter of law, the plaintiff had a right to file this law suit in his own name, and that this cause of action, or any part of same is not vested in the United States Government, U. S. Compensation Commission or any one else except Jesse H. Denton. In considering this case you will ignore anything tending to show that any one has any interest in the recovery except the plaintiff, Jesse H. Denton, himself.

Given.

[fol. 265] No. 9

The Court instructs the jury for the plaintiff that you should ignore the evidence concerning a wreck that the plaintiff was in near Quebec, Louisiana, prior to his injury here complained of.

Given.

No. 10

The Court instructs the jury for the plaintiff that under the law in Mississippi, the defendant Railroad Companies are liable for all damages plaintiff sustained as a direct result of the injuries susrained by reason of the carelessness or negligence, if any, by their servant or employee while performing his duties.

Given.

[fol. 266] No. 11

The Court instructs the jury for the plaintiff that if you find in favor of the plaintiff, Jesse H. Denton, the form of your verdict should be as follows, to-wit:

"We, the jury, find in favor of the plaintiff in the sum of $— against —— and ——," filling in the blank space as to defendants and the amount the jury fixes the plaintiff's damages at, and not to exceed $35,000.00, but use a separate piece of paper on which to write your verdict. It is not necessary for either member of the jury to sign your verdict.

Given.

No. 12

The Court instructs the jury for the plaintiff that when you retire to the jury room to consider your verdict, you will have with you in the jury room all instructions that the Court will give you, and that you should read, or have read to you all of the instructions given by the Court, and from said instructions and the evidence, render your verdict.

Given.

[fol. 267] No. 13

The Court instructs the jury for the plaintiff, Jesse H. Denton, that the plaintiff is not required to prove his damages by a mathematical certainty or calculation in dollars and cents, but if you find in favor of the plaintiff, that it is your sworn duty to fix the amount of your verdict in an amount sufficient to compensate the plaintiff for the loss of time since the date of injury up to this date, and compensate the plaintiff for all pain and suffering and mental anguish suffered since the date of the injury up to this date, as well as an amount sufficient to compensate the plaintiff for the reduction, if any, in his earning capacity in the future, all amounts incurred by plaintiff as doctor's bills, hospital bill, as shown by the evidence. If you find in favor of the plaintiff, all of said items of damage should be taken into consideration in arriving at the amount of your verdict, and your verdict should then be in the amount that the jury finds to be sufficient and proper to compensate the plaintiff for all of said damages, not to exceed $35,000.00.

Given.

[fol. 268] No. 14

The Court instructs the jury for the plaintiff that the fact that the plaintiff is and was an employee of the United States Government in the capacity of a railway postal clerk, is no defense for the defendants; that the plaintiff is entitled to the same fair trial and fair consideration at your hands that a passenger injured on the train would be entitled to, as the plaintiff, as a matter of law, was a passenger on the train at the time the injury complained of is alleged to have occurred.

Given.

No. 15

The Court instructs the jury for the plaintiff that it is not necessary that the jury believe that the carelessness and negligence of the defendant, Jim Hunter, was the sole proximate cause of the injury here complained of for you to find in favor of the plaintiff, Jesse H. Denton, but under the law of Mississippi, if you believe from a preponderance of the evidence that the defendant, Jim Hunter, was negligent or car-less and that said negligence contributed to the injury, if any, of the plaintiff, Jesse H. Denton, it is your sworn duty to find in favor of the plaintiff.

Given.

[fol. 269] No. 16

The Court instructs the jury that Jesse H. Denton, was not the clerk in charge of the Railway post office and was not the transfer clerk, but was performing his duties as railway postal clerk in the railway post office under the supervision of Ike Worthington, and that under the postal regulations introduced gave the transfer clerk and the clerk in charge authority to direct any porter, that the plaintiff, Jesse H. Denton, under said regulation, did not have such authority.

Given.

— 17

The Court instructs the jury for the plaintiff that if you believe from a preponderance of the evidence that Jim Hunter was the servant of the Illinois Central Railroad Company and that Mr. Tolbert was the supervisor of Mail porters, and an employee of the Illinois Central Railroad Company, as assistant to Mr. Van Buren, station master, and it was Mr. Tolbert's duty to supervise the porters, known as mail porters, whose duty it was to handle the mail at the depot in Jackson, Missippi, in loading and unloading the mail from the car door from the railway post office, and storage cars, and that Jim Hunter was one of the [fol. 270] mail porters under the supervision of Mr. Tolbert, and was loading mail into a railway post office, being

a part of the Yazoo & Mississippi Valley Railroad Company's train, it is your sworn duty to find in favor of Jesse H. Denton as against Jim Hunter and the Illinois Central Railroad Company, and if you believe further from a preponderance of the evidence that Jim Hunter was the servant of the Yazoo & Mississippi Valley Railroad Company while unloading the mail and loading the mail into the cars constituting a part of the Y. & M. V. train, it is your sworn duty to find in favor of the plaintiff, Jesse H. Denton, against all three defendants.

Given.

No. 18

The Court instructs the jury for the plaintiff that if you believe from a preponderance of the evidence that Jim Hunter was employed by the defendant, Illinois Central Railroad Company, as a porter, and that the said Illinois Central Railroad Company furnished terminal facilities and porters to load and unload the mail from the trains of [fol. 271] the defendant, Yazoo & Mississippi Valley Railroad Company, and that Jim Hunter, when loading mail on a train of the Yazoo & Mississippi Valley Railroad Company, loaded the said mail in a negligent or careless manner and injured the plaintiff, Jesse H. Denton, who was then on duty in a United States Railway post office, constituting a part of said train, it is your sworn duty to find in favor of the plaintiff, Jesse H. Denton, against all three defendants, if you believe from a preponderance of the evidence that he, the said Jim Hunter, in loading said mail was acting as the servant or employee of the two railroad companies defendants, and if you believe from a preponderance of the evidence that Jim Hunter was the employee and servant of only one or either one of the defendant railroad companies, then you should find in favor of the plaintiff against said railroad company and Jim Hunter.

Given.

No. 19

The Court instructs the jury for the plaintiff that if you believe from a preponderance of the evidence that the Illinois Central Railroad Company employed Jim Hunter as a porter, and that said Railroad Company employed Mr.

Tolbert as a mail porter supervisor, whose duty it was to [fol. 272] supervise the mail porters, and that Mr. Tolbert was so employed and performing said duties at the time of the injury here complained of, and that Jim Hunter was one of the mail porters under his supervision, working under the supervision of Mr. Tolbert at the time of the injury here complained of, that in that event, Jim Hunter was and is the servant of the said Illinois Central Railroad Company, and said Railroad Company was, and is liable for all damages as a direct result of the negligence and carelessness of Jim Hunter, if any, in loading the mail on the Yazoo & Mississippi Valley Railroad Company's trains, and if you further believe by a preponderance of the evidence that Jim Hunter, while so employed and so engaged, was careless and negligent and slung, pitched or threw a sack of mail in a negligent and careless manner into the mail car and injured the plaintiff, Jesse H. Denton, it is your sworn duty to find in favor of the plaintiff against Jim Hunter and the Illinois Central Railroad Company.

Given.

No. 20

The Court instructs the jury for the plaintiff that if you believe from the preponderance of the evidence that the defendant, Jim Hunter, carelessly or negligently slung, [fol. 273] pitched or threw a sack of mail into the car of the railway post office, and struck and injured the leg of Jesse H. Denton, at a time when and there the plaintiff was performing his duties as railway postal clerk and that said carelessness was a proximate cause, or contributed to the injury here complained of, it is your sworn duty to find in favor of the plaintiff as against Jim Hunter, and if you believe that Jim Hunter was working under the supervision of Mr. Tolbert while loading said mail, and that Mr. Tolbert was an employee of the Illinois Central Railroad Company, it is your sworn duty to find in favor of Jesse H. Denton, and against Jim Hunter and the Illinois Central Railroad Company.

Given.

No. 21

The Court instructs the jury for the plaintiff that as a matter of law Jesse H. Denton was a passenger on the defendant, Yazoo & Mississippi Valley Railroad Company's train and was entitled to expect said defendant, their employee, servant and agent, to use every reasonable precaution for his safety.

Given.

[fol. 274]

No. 22

The Court instructs the jury for the plaintiff that if you believe from the preponderance of the evidence that Jim Hunter was the servant of the Yazoo & Mississippi Valley Railroad Company and was not the servant of the Illinois Central Railroad Company while loading sacks of mail, then you should find in favor of the plaintiff, Jesse H. Denton, against the defendants, Jim Hunter, and the Yazoo & Mississippi Valley Railroad Company, provided that you believe from a preponderance of the evidence that the plaintiff was injured by the carelessness and negligence of Jim Hunter in loading the mail.

Given.

No. 23

The Court instructs the jury for the plaintiff that the railroad company owed to the plaintiff, Jesse H. Denton, the same protection that it owed to any passenger on its train, and it then and there became and was the duty of the defendant railroad companies and their employees to exercise the highest degree of care and diligence for the safety of the plaintiff, Jesse H. Denton, while he was upon [fol. 275] the train discharging his duties as an employee of the United States Government in the capacity of a railway postal clerk, and if you believe from a preponderance of the evidence that the plaintiff, Jesse H. Denton, sustained injuries which were caused by the negligent failure, if any, of the defendants, or either of them, to exercise this high degree of care, then and in that event it is your sworn duty to find in favor of the plaintiff against Jim Hunter and the Illinois Central Railroad Company, if you believe from a preponderance of the evidence that Jim Hunter was the

servant of the Illinois Central Railroad Company at the time of the injury here complained of, and against Jim Hunter and the Yazoo & Mississippi Valley Railroad Company if you believe from a preponderance of the evidence that Jim Hunter was the servant of the Yazoo & Mississippi Valley Railroad Company at the time of the injury here complained of, and against Jim Hunter, the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company, if you believe from a preponderance of the evidence that Jim Hunter was the servant of the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company at the time of the injury here complained of.

Given.

[fol. 276] IN CIRCUIT COURT OF LAUDERDALE COUNTY

INSTRUCTIONS FOR DEFENDANT—Filed June 18, 1930

No. 1

The Court instructs the jury for the defendants that although you may believe from the evidence that Jim Hunter was employed generally as a porter by the Illinois Central Railroad Company and that the Illinois Central Railroad Company had the right to discharge him, still if you further believe from the evidence that under the postal rules and regulations Jim Hunter was furnished by the Railroad Company as a man to load and unload mail under the direction of the transfer clerk or clerk in charge of the car and that at the time of plaintiff's injury, Jim Hunter, while loading the mail, was subject to the direction of the transfer clerk or clerk in charge, then he was not an employee of the defendant railroad company, or either of them in loading the mail, and it is your duty to return a verdict for the defendants, Illinois Central Railroad and Yazoo & Mississippi Valley Railroad Company.

Given.

[File endorsements omitted.]

[Titles omitted]

No. 2

[fol. 277] The Court instructs the jury for defendants, Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company, that although you may believe from the evidence that Jim Hunter was an employee of the Illinois Central Railroad Company and that he was furnished by said Railroad Company, under the regulations of the United States Government, to load mail into the mail car, still, if you further believe from the evidence that in loading the mail Hunter was under the supervision and control of the mail clerks, and not the railroad company, then the Railroad Company is not liable for any injury sustained by plaintiff, because of being struck by a sack of mail pitched into the car by Hunter, and you should return a verdict for the defendant Railroad Companies.

Given.

No. 3

The Court instructs the jury for the defendants, Yazoo & Mississippi Valley Railroad Company and Illinois Central Railroad Company, that although you may believe from [fol. 278] the evidence that defendant, Jim Hunter, was not an employee of the United States Government, still, if you believe from the evidence that under the Postal Laws and Regulations said Jim Hunter, while loading the mail into the mail car in question, was under the direction and control of the transfer clerk, or clerk in charge of the car, then the defendant Railroad Company that furnished Jim Hunter for the purpose of loading and piling the mails in the car is not responsible or liable to plaintiff for any negligence of said Jim Hunter in so loading the mail, and you should return a verdict for the defendant railroad companies.

Given.

No. 4

The Court instructs the jury for the defendants that if you believe from the evidence that the negro porter was piling the mail sacks in the door of the car in the usual

and ordinary way, though faster than they should be removed by plaintiff, which caused a pile of mail sacks to accumulate in the car door, and that the sack which struck plaintiff fell or rolled off of the pile of mail in the door of the car in the ordinary course of events, then the plain-
[fol. 279] tiff was injured by a mere accident, and he would not be entitled to recover of the defendants, and it would be your duty in such event to find for the defendants.

Given.

No. 5

The Court instructs the jury for the defendants that the plaintiff's suit is based upon the alleged negligence of the defendant, Jim Hunter, in loading mail into the mail car while it was standing at the station of Jackson, and the plaintiff is not entitled to recover any damages of the defendants unless he was proved to your satisfaction, by a prepomderance of the testimony, that the defendant, Jim Hunter, was negligent in the way in which he loaded the sack of mail in question, and that such negligence was the cause of or contributed to plaintiff's injury. The mere fact that the sack of mail was placed or pitched into the car and either fell or slipped against the plaintiff's leg and injured him, is not sufficient to warrant a verdict in his favor; but the plaintiff must go further and prove by a preponderance of the testimony that the defendant, Jim Hunter, was negligent in the way in which he put this sack of mail into the car, and that such negligence was the proximate cause of the plaintiff's injury; and unless he had done
[fol. 280] this then it is your sworn duty to return a verdict for the defendants.

Given.

No. 6

The Court instructs the jury for the defendants that the burden is on the plaintiff to prove all of the material charges in his declaration by a preponderance of the evidence, and among the things necessary to be so proven is the charge that he was injured by reason of the negligence of the defendants, and it is not sufficient to prove merely that he was hit by the sack of mail which was being loaded into the

car by an employee of the defendants, or one of them; and he must go further and show that such employee, in handling said mail, failed to handle it as an ordinary prudent man would have handled it under the circumstances; and unless he has established this by a preponderance of the evidence, it would be your sworn duty to return a verdict for the defendants.

Given.

[fol. 281] No. 7

The Court instructs the jury for the defendant that the porter, Jim Hunter, while loading the sacks of mail into the car had the right to assume that Denton would use reasonable care for his own safety and to avoid being struck by any sack of mail, and it was Denton's duty to use such care, and unless you believe from the preponderance of the evidence that Jim Hunter negligently threw the sack of mail into the car in a manner likely to injure Denton, while he, (Denton), was using reasonable care to avoid being struck by the sack, then Jim Hunter was not guilty of any actionable negligence and you should return a verdict for the defendants.

Given.

No. 8

And the Court instructs the jury for the defendants that even if you should believe that Jim Hunter was guilty of [fol. 282] negligence, in the way he loaded the sack of mail into the car, still, if you also believe that Denton was not using due care for his own safety, then Denton is partly responsible for his own injury, and you should reduce any damages which would otherwise award him in proportion to the amount of negligence attributable to Denton.

Given.

No. 9

The Court instructs the jury for the defendant that in determining plaintiff's ability to work and make a living the jury should not take into consideration any particular job, or line of work, but should consider any employment of means of livlihood which an ordinary man, circumstances like the plaintiff, could follow.

Given.

[fol. 283] No. 10

The Court instructs the jury for the defendants that the facts that this case is submitted to the jury for decision should not be taken as an indication that the Court is of the opinion that the plaintiff is entitled to recover; but the case is submitted merely to the jury to determine from the facts whether or not the plaintiff has made out a case against defendants by a preponderance of the evidence, and unless he has so proven his case it is the duty of the jury to return a verdict for the defendants.

Given.

No. 11

The Court instructs the jury for the defendants that under no circumstances would the defendants be liable to the plaintiff for any injuries except those which ordinarily and usually and in the common course of events, would fol-
[fol. 284] low the negligent act relied upon; and you would not be authorized to return any verdict at all in favor of the plaintiff unless the plaintiff has made out a case by a preponderance of the evidence.

Given.

No. 12

The Court instructs the jury for the defendants that under the law no person or corporation is liable for any damages except those which are usual and ordinary and which happen in the ordinary course of human events, and the defendant in this case would not be liable to the plaintiff for any damages but those of the character described; and the defendants would not be liable to the plaintiff at all for any damages unless he has proven by a preponderance of the evidence that he was injured by reason of the want of care of the defendants, and unless he has so proven your verdict should be for the defendants.

Given.

[fol. 285] IN CIRCUIT COURT OF LAUDERDALE COUNTY

DEFENDANTS' REFUSED INSTRUCTIONS—Filed June 18, 1930

[Titles omitted.]

No. 1

The Court instructs the jury to return a verdict for the defendant, Jim Hunter.

Refused.

[File endorsements omitted.]

No. 2

The Court instructs the jury to return a verdict for the defendant, Yazoo & Mississippi Valley Railroad Company.

Refused.

No. 3

The Court instructs the jury to return a verdict for the defendant, Illinois Central Railroad Company.

Refused.

[fol. 286] The Court instructs the jury for the defendants that the testimony shows without contradiction that the defendant, Jim Hunter, was loading the mail into the mail car and that the plaintiff was taking the mail so loaded, and while it was being so loaded, from the door of the mail car and placing it in the car, and that the plaintiff was thereby engaged in a joint enterprise with the defendant, Jim Hunter, to wit: the loading of the mail in the mail car, and you are further instructed that the plaintiff, being so engaged, assumed the risk of being struck and injured by one of the mail sacks, provided the mail was being loaded and piled in the door-way of the car in the customary manner; and if you believe from the evidence that the mail was being loaded and piled in the doorway of the car by the defendant, Jim Hunter, in the usual and customary way, and that one of the sacks of mail thrown or loaded on top of the other mail piled in the doorway slipped off of the pile and struck the plaintiff's leg, then this is a risk which the plaintiff assumed, and it is your duty to return a verdict for the defendant.

Refused.

[fol. 287] IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

SPECIAL BILL OF EXCEPTIONS OF DEFENDANT—Filed June 18, 1930

Be it known that on the argument of this case by attorney J. V. Gipson, attorney for the plaintiff, Mr. Gipson charged to the jury that during the testimony of Dr. Anderson, a witness for the plaintiff, that Mr. Bozeman, attorney for the defendant, asked Dr. Anderson if he did not give the plaintiff, Denton, medicine for syphilis, and that this might get him in bad with his wife, who was sitting in the court room as a spectator and hearing the testimony; and that Mr. Gipson called upon the jury, by their verdict, to resent the conduct of said attorney indicating that Denton was afflicted with syphilis.

Thereupon attorney for the defendants objected and excepted to the argument of counsel as being improper and tending to prejudice the jury. In answer thereto the Court instructed the jury that they were to decide this case according to the testimony. Thereupon, attorney Gipson said that he would leave the matter to the jury and called on [fol. 288] them to remember what was done in the course of the trial, to which remarks attorneys for the defendants again excepted, and the Court again admonished the jury that they should decide the case according to the testimony.

To make the said facts a matter of record this special bill of exceptions was signed at the request of counsel for the defendants during the trial of said cause, this the 18th day of June, 1930.

J. D. Fatheree, Circuit Judge.

The erasure on page one made by the trial judge.

Fatherree.

[File endorsement omitted.]

[fol. 289] IN CIRCUIT COURT OF LAUDERDALE COUNTY

No. 2279

JESSE H. DENTON

vs.

Y. & M. V. R. R. Co., et al

VERDICT OF THE JURY AND JUDGMENT THEREON—June 18, 1930

This cause came on this day for hearing, came the parties in person and by counsel, and issues being joined came a jury of good and lawful men, duly sworn and empaneled, composed of W. F. Temple and eleven others, who having heard all of the testimony, the argument of counsel and receiving the instructions of the Court, retired to consider of their verdict, and presently returned into open court the following verdict, to-wit:

"We, the jury, find in favor of the plaintiff in the sum of ($12,000.00) Twelve Thousand Dollars, against the defendants, Yazoo & Mississippi Valley Railroad Company, Illinois Central Railroad Company, and Jim Hunter."

It is, therefore ordered that the plaintiff have and recover of and from the defendant, Yazoo & Mississippi Valley Railroad Company, a corporation, and of and from the Illinois Central Railroad Company, a corporation, and of and from Jim Hunter, an individual, jointly and severally, the sum of twelve thousand dollars, and all costs herein incurred, for all of which let execution issue.

[fol. 290] IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

MOTION FOR NEW TRIAL—Filed June 18, 1930

Comes the defendants, Yazoo & Mississippi Valley Railroad Company, Illinois Central Railroad Company, and Jim Hunter, and severally move the Court to set aside the

verdict and judgment rendered against them and entered in the above cause on a previous day of this term of the court, and to grant the defendants, and each of them, a new trial, and assigns the following causes:

1. The Court erred in overruling and denying the application of the defendant, Jim Hunter, to change the venue of this suit to the County of Hinds.

2. The Court erred in overruling and denying the application of the defendant, Yazoo & Mississippi Valley Railroad Company to change the venue of this action to the County of Hinds.

3. The court erred in sustaining the motion of the plaintiff to strike out the defendant's Fourth Notice under the General Issue.

4. The Court erred in admitting, over the objection of the defendants, testimony of the plaintiff, Denton, that he had no authority to supervise or control the movements of Jim Hunter, the porter, in loading the mail.

[fol. 291] 5. The Court erred in admitting evidence, over the objection of defendants, the trip report made by I. C. Worthington, clerk in charge April 25, 1927, identified as "Exhibit A" to the testimony of the plaintiff, Denton.

6. The Court erred in admitting in evidence, over the objection of defendants, Section 1530 of the Postal Laws and Regulations, and the Note thereto, identified as Exhibit B to the testimony of Denton, the plaintiff.

7. The Court erred in admitting in evidence, over the objection of defendants, Section 1294, Paragraph 25; Section 1286, Paragraph 5; Section 1294, Parahraph 3, Section 1568 and Section 1501 of the Postal Laws and Regulations, identified as Exhibit C to the testimony of Denton, and each of them.

8. The Court erred in admitting in evidence, over the objection of the defendants, Section 18 of the instructions and rulings with reference to the transportation of mail, identified as Exhibit D to the testimony of the plaintiff, Denton.

9. The Court erred in excluding, upon the motion of the plaintiff, the Rules and Regulations identified as Exhibit F to the testimony of the plaintiff, Denton.

10. The Court erred in holding incompetent, upon the objection of plaintiff, the pu*ad*tion propounded to the defendants to the witness, Denton, if it was not the rule and [fol. 292] practice in loading mail, when the train was late, to take the mail into the car without taking time to examine every sack labelled, if this needed to be done in order to avoid the delay of the train, substantially as set out in Exhibit F, and in refusing to permit the witness, Denton, to answer said question.

11. The Court erred in holding incompetent, on objection of plaintiff, the question propounded to the witness, Denton, if it was not the practice when the schedule time of the station stop was up that the balance of the mail should be loaded as rapidly as possible, separation and piling to be completed after the train leaves the station, substantially as set up in Exhibit F, and in refusing to permit the witness, Denton, to answer said question.

12. The Court erred in holding incompetent, on objection of the plaintiff, the question propounded to the witness, Denton, if it was not a fact that the mail clerks were instructed to take mail into the car as rapidly as possible, and to avoid scrutinizing every sack label, if practicable, and to make separation after the mails were loaded, substantially as set out in Exhibit F, and in refusing to permit the witness, Denton, to answer said question.

13. The Court erred in excluding, upon motion of the plaintiff, Section 1290 of the Postal Laws and Regulations offered in evidence by the defendants.

[fol. 293] 14. The Court erred in admitting each and all of the testimony offered by the plaintiff and objected to by the defendants and admitted over and notwithstanding such objections, as shown by the stenographer's notes, which are herewith submitted to the Court as a part hereof.

15. The Court erred in excluding each and all of the testimony offered by the plaintiff and exc;uded by the Court, all as shown by the stenographer's notes, which are herewith submitted to the Court as a part hereof.

16. The Court erred in refusing each and all of the peremptpry instructions requested by the defendants, and each of them, and refused by the Court.

17. The Court erred in refusing the other instruction—the fourth instruction—requested by the defendant Railroad Companies and refused by the Court.

18. The Court erred in giving each and all of the instructions given by the plaintiff.

19. The Court erred in giving instructions which are conflicting and contradictory and, therefore, confusing to the jury.

20. The verdict is contrary to the instructions of the Court and is contrary to law.

21. The verdict is contrady to the evidence.

22. The verdict is grossly excessive, and is the result of passion and prejudice on the part of the nine jurors who [fol. 294] returned the verdict, which passion and prejudice were aggravated by the improper remarks and argument of the attorney for the plaintiff, as shown by the Special Bill of Exceptions given by the Court during the trial, which is referred to as a part hereof.

23. In assuming jurisdiction of said cause, and in submitting said cause to the jury, and in giving each and all of the instructions given by the plaintiff, and in refusing each and all of the instructions requested by the defendant and refused by the Court, and in rendering the judgment against the defendants, and each of them, the Court denied to the defendants, and each of them, rights claimed and asserted by the defendants, and each of them, under the Constitution and laws of the United States, which prescribe, among other things, that exclusive jurisdiction of cases arising under the postal laws of the United States is vested in the District Courts of the United States for the proper district.

Bozeman & Cameron, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 295] IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

ORDER OVERRULING DEFENDANTS' MOTION FOR NEW TRIAL

Upon hearing the defendants' motion to set aside the verdict rendered at a previous day of this term of the Court and for a new trial, it is considered by the Court that said motion be and the same is overruled; to which action and judgment of the Court the defendants, and each of them, except.

[fol. 296] IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

NOTICE TO STENOGRAPHER—Filed July 3, 1930

Hon. John L. Barton, official court stenographer, Meridian, Mississippi.

DEAR SIR: This is to notify you that the defendants desire to prosecute an appeal to the Supreme Court of Mississippi from the judgment rendered against them in the above case on or about June 18, 1930, a day of the June term of the Circuit Court of Lauderdale County, and this is to notify and request you to transcribe and file your stenographic notes of the testimony and proceedings on the trial of said cause, within the time as required by statute.

Bozeman & Cameron, Attorneys for Defendants.

Service of the foregoing notice is acknowledged, this the 3rd day of July, 1930.

J. L. Barton, Court Reporter.

[File endorsement omitted.]

[fol. 296½] IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

PETITION FOR APPEAL

To the Clerk of the Circuit Court of the County of Lauderdale, in said State:

Your petitioners, the said defendants undersigned, respectfully state that a judgment was rendered in the above

styled case by said Circuit Court, on the 18th day of June, 1930, A. D., at the June Term, A. D., 1930, thereof, in favor of Jesse H. Denton against Yazoo & Mississippi Valley Railroad Company, Illinois Central Railroad Company, and Jim Hunter, for Twelve Thousand Dollars,

And your petitioners, feeling aggrieved at said judgment of said Circuit Court, ask an appeal therefrom to the Supreme Court of the State of Mississippi at the next term thereof.

Respectfully submitted, this the 19th day of August, 1930, A. D.

(Signed) Yazoo & Mississippi Valley Railroad Co., Illinois Central Railroad Co., and Jim Hunter, by Bozeman & Cameron, Attorneys for Defendants.

[fol. 297] Citation, in usual form, omitted in printing.

Endorsed: Citation waived September 5, 1930, Attorney for Plaintiff, J. V. Gipson.

[fols. 298 & 299] Bond on appeal for $500.00, approved and filed August 27, 1930, omitted in printing.

[fols. 300 & 301] Bond on appeal for $24,000, approved and filed August 27, 1930, omitted in printing.

[fol. 302] Clerk's fee bill omitted in printing.

[fol. 303] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 304] IN SUPREME COURT OF MISSISSIPPI

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY et al., Appellants,

versus

JESSE H. DENTON, Appellee

ASSIGNMENT OF ERRORS—Filed Sept. 22, 1930

Come the Appellants and assign the following errors of the Court below:

1. The Court erred in overruling and denying the application of the defendant, Jim Hunter, to change the venue of this suit to the County of Hinds (p. 16).

2. The Court erred in overruling and denying the application of the defendant, Yazoo & Mississippi Valley Railroad Company to change the venue of this action to the County of Hinds (p. 19).

3. The Court erred in sustaining the motion of the plaintiff to strike out the defendant's Fourth Notice under the general issue (p. 27, 35, 38).

4. The Court erred in admitting, over the objection of the defendants, testimony of the plaintiff, Denton, and *com*-plaintiff's witness Combs, that he had no authority to supervise or control the movement of Jim Hunter, the porter, in loading the mail (p. 167).

5. The Court erred in admitting in evidence, over the objection of defendants, the trip report made by I. C. Worthington, clerk in charge, April 25th, 1927, identified as "Exhibit A" to the testimony of the plaintiff, Denton (page 64).

6. The Court erred in admitting in evidence, over the objection of defendants, Paragraph 25 of Section 1272, and Paragraph 5 of Section 1286 and Paragraph 3 of Section 1294 of the Postal Laws and Regulations offered by plain-[fol. 305] tiff and identified as Exhibit C (p. 92-94).

7. The Court erred in sustaining plaintiff's objection to defendants' question propounded to plaintiff as to whether or not the United States Government and the mail postal authorities were as much interested in trains maintaining their schedules and moving promptly as passengers, or express people, or anybody else (p. 113).

8. The Court erred in sustaining the objection of the plaintiff to the following questions propounded by defendants to plaintiff:

"Q. Now, with reference to your going back to work—Is it a fact that you have also, in addition to the money that you have been receiving from the Government, been receiving other amounts from other sources during and because of your inability to work?" (p. 146).

and

"Q. Is it not a fact that at the time of your injury, and has it not been always, your experience and the Regulations of the Railway Mail Service Department, that so far as possible, a clerk will take mail into the cars at stations without viewing, or even looking at the label, if it is necessary to do so in order to avoid delay?" (p. 146).

9. The Court erred in admitting in evidence, over the objection of the defendants, Section 18 of the instructions and rulings with reference to the transportation of mail, identified as Exhibit D to the testimony of the plaintiff, Denton (p. 152).

10. The Court erred in excluding upon the motion of the plaintiff, the Rules and Regulations identified as Exhibit F to the testimony of the plaintiff, Denton.

11. The Court erred in excluding, upon motion of the plaintiff, part of Section 1293 of the Postal Laws and Regulations offered in evidence by the defendants (p. 263).

12. The Court erred in admitting each and all of the testimony offered by the plaintiff and objected to by the defendants and admitted over and notwithstanding such objections, as shown by the stenographer's notes, which are herewith submitted to the Court as a part hereof.

[fol. 306] 13. The Court erred in excluding each and all of the testimony offered by the defendants and objected to by the plaintiff and excluded by the Court, all as shown by the stenographer's notes, which are herewith submitted to the Court as a part hereof.

14. The Court erred in refusing to instruct the jury, at the request of defendants, to return a verdict for the defendant, Yazoo & Mississippi Valley Railroad Company (p. 326).

15. The Court erred in refusing to instruct the jury, at the request of the defendants, to return a verdict for the defendant, Illinois Central Railroad Company (p. 326).

16. The Court erred in refusing to instruct the jury, at the request of the defendants, to return a verdict for the defendant, Jim Hunter (p. 326).

17. The Court erred in refusing to instruct the jury, at the request of the defendants "that the testimony shows without contradiction that the defendant, Jim Hunter, was loading the mail into the mail car and that the plaintiff was taking the mail so loaded, and while it was being so loaded, from the door of the mail car and placing it in the car, and that the plaintiff was thereby engaged in a joint enterprise with the defendant, Jim Hunter, to-wit: the loading of the mail in the mail car, and you are further instructed that the plaintiff, being so engaged, assumed the risk of being struck and injured by one of the mail sacks, provided the mail was being loaded and piled in the doorway of the car in the customary manner; and if you believe from the evidence that the mail was being loaded and piled in the doorway of the car by the defendant, Jim Hunter, in the usual and customary way, and that one of the sacks of mail thrown or loaded on top of the other mail piled in the doorway slipped off the pile and struck the plaintiff's leg, [fol. 307] then this is a risk which the plaintiff assumed, and it is your duty to return a verdict for the defendant" (p. 327).

18. The Court erred in instructing the jury for the plaintiff that the plaintiff did not assume any risk by reason of his employment as a United States Railway Postal Clerk of being injured by the negligence of either of the defendants (p. 297).

19. The Court erred in instructing the jury for the plaintiff that the defendants had no legal rights to handle the mail rough, and to throw, pitch or sling sacks of mail into the aisle and thereby endanger the plaintiff, in order to hurry the departure of the train from the Jackson depot because there was an extra amount of mail to be loaded (p. 298).

20. The Court erred in instructing the jury for the plaintiff that the plaintiff had a right to expect the defendants to exercise a high degree of care in loading a large amount of accumulated mail at Jackson * * * and in the way same would have been loaded had there not been any extra accumulated mail to be loaded (p. 299).

21. The Court erred in instructing the jury for the plaintiff that as a matter of law there was not a joint undertak-

ing between the plaintiff and the defendant, Jim Hunter, in loading the mail (p. 300).

22. The Court erred in instructing the jury for the plaintiff that as a matter of law the defendants were not entitled to any of the benefits of any amounts that may have been paid to plaintiff by the United States Employees' Compensation Commission during his disability, either on the question of liability or in reduction of damages (p. 301).

23. The Court erred in instructing the jury for the plaintiff that they should ignore the evidence concerning the wreck the plaintiff was in prior to his injury here complained of (p. 302).

[fol. 308] 24. The Court erred in instructing the jury for the plaintiff that under the law in Mississippi the defendant companies are liable for all damages sustained by plaintiff by reason of the carelessness or negligence, if any, of their servant or employee while performing his duties (p. 303).

25. The Court erred in instructing the jury for the plaintiff that the plaintiff is entitled to the same fair trial and fair consideration at your hands that a passenger injured on the train would be entitled to, as the plaintiff, as a matter of law, was a passenger on the train at the time of the injury complained of is alleged to have occurred (p. 306).

26. The Court erred in instructing the jury for the plaintiff that the plaintiff, Denton, was not the clerk in charge of the Railway postoffice, and was not the transfer clerk, but was performing his duties as Railway postal clerk, under the supervision of Mr. Ike Worthington, and that under the postal regulations introduced in evidence the plaintiff had no authority to direct any porter (p. 308).

27. The Court erred in instructing the jury for the plaintiff "that if you believe from a preponderance of the evidence (1) that Jim Hunter was the servant of the Illinois Central Railroad Company and (2) that Mr. Tolbert was the supervisor of Mail porters, and (3) an employee of the Illinois Central Railroad Company, as assistant to Mr. Van Buren, Station Master, and (4) it was Mr. Tolbert's duty to supervise the porters, known as mail porters, whose duty is was to handle the mail at the depot in Jack-

son, Mississippi, in loading and unloading the mail from the car door from the railway postoffices, and storage cars, and (5) that Jim Hunter was one of the mail porters under the supervision of Mr. Tolbert and (6) was loading mail into a railway postoffice, being a part of the Yazoo & Mississippi [fol. 309] Valley Railroad Company's train, it is your sworn duty to find in favor of Jesse H. Denton as against Jim Hunter and the Illinois Central Railroad Company, and (7) if you believe further from a preponderance of the evidence that Jim Hunter was the servant of the Yazoo & Mississippi Valley Railroad Company while unloading the mail and the loading the mail into the cars constituting a part of the Y. & M. V. train, it is your sworn duty to find in favor of the plaintiff, Jesse H. Denton, against all three defendants" (p. 309).

28. The Court erred in instructing the jury for the plaintiff that if they believe from a preponderance of the evidence that Jim Hunter was an employee of the defendant Railroad Companies and that while loading mail on the train he loaded the same in a negligent and careless manner and injured the plaintiff, who was then on duty in the railway post office, that it was the sworn duty of the jury to find in favor of the plaintiff against the said Jim Hunter and the Railroad Company whose employee he was (pp. 310, 311 and 312).

All of these instrutions leave out of consideration the regulations that the porter, Jim Hunter, was required to load the mail under the supervision of the postal clerks; and while a general employee of the Railroad Company was in loading the mail pro hac vice the servant, not of the Railroad Company, but of the postal clerks.

29. The Court erred in instructing the jury for the plaintiff that as a matter of law the plaintiff, Denton, was a passenger on defendant's train and was entitled to expect the defendant Company and their employees to use every reasonable precaution for his safety (p. 313).

30. The Court erred in instructing the jury for the plaintiff that the Railroad Company owed the plaintiff the same protection that it owed to a passenger on its train, and that it then and there became and was the duty of the defendant Railroad Companies and their employees to exercise the *the*

[fol. 310] highest degree of care and diligence for the safety of plaintiff while he was on the train discharging his duties as an employee of the United States Government (p. 314).

31. The Court erred in refusing each and every of the instructions asked by the defendants and refused by the Court.

32. The Court erred in giving each and every of the instructions asked by the plaintiff and given by the Court.

33. The Court erred in giving instructions which are conflicting and contradictory, and, therefore, confusing to the jury.

34. The verdict is contrary to the instructions of the Court and is contrary to law.

35. The verdict is contrary to the evidence.

36. The verdict is grossly excessive, and is the result of passion and prejudice on the part of the nine jurors who returned the verdict, which passion and prejudice were aggravated by the improper remarks and argument of the attorney for the plaintiff, as shown by the Special Bill of Exceptions given by the Court during the trial, which is referred to as a part hereof.

37. The Court erred in overruling the defendants' motion for a new trial.

38. In assuming jurisdiction of said cause, and in submitting said cause to the jury, and in giving each and all of the instructions given the plaintiff, and in refusing each and all of the instructions requested by the defendants and refused by the Court, and in rendering the judgment against the defendants, and each of them, the Court denied to the defendants, and each of them, rights claimed and asserted by the defendants, and each of them, under the Constitution and laws of the United States, which prescribe, among other things, that exclusive jurisdiction of cases arising under the postal laws of the United States is vested in the District Courts of the United States for the proper district.

[fol. 311] Wherefore, by reason of the errors above assigned, and the other reversible errors apparent in the

record, the defendants pray the Court to reverse the judgment of the Court below and to enter judgment here for the defendants, or such of them as are entitled thereto.

Chas. N. Burch, H. D. Minor, (S.) Bozeman & Cameron, Attorneys for Appellants.

We hereby certify that we have this day delivered to Honorable J. V. Gipson, attorney for Appellees, a copy of the foregoing assignment of errors, this the 12th day of September, 1930.

(S.) Bozeman & Cameron, Attorneys for Appellants.

[File endorsement omitted.]

[fol. 312] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ARGUMENT AND SUBMISSION—Dec. 8, 1930

Argued by A. S. Bozeman and H. D. Minor for appellant and by J. V. Gipson for appellee and submitted on briefs by Bozeman & Cameron, Charles N. Burch, H. D. Minor for appellant and by J. V. Gipson for appellee.

[fol. 313] IN SUPREME COURT OF MISSISSIPPI, DIVISION A

No. 29078

YAZOO & MISSISSIPPI VALLEY RAILROAD Co. et al.

vs.

JESSE H. DENTON

OPINION—Filed April 13, 1931

COOK, J.:

The appellee, Jesse H. Denton, instituted this suit in the Circuit Court of Lauderdale County, Mississippi, against the Yazoo & Mississippi Valley Railroad Company, the Illinois Central Railroad Company, and Jim Hunter, a por-

ter, alleged to have been employed by both railroad companies for damages for personal injuries alleged to have been sustained as a result of negligence of said porter in loading United States mail onto a train of the Yazoo & Mississippi Valley Railroad Company, and from a verdict and judgment for $12,000 against all of the defendants, this appeal was prosecuted.

The declaration alleged that the appellee was a United States railway postal clerk on the train of the Yazoo & Mississippi Valley Railroad Company which stopped at Jackson, Mississippi, for the purpose of loading, unloading, and exchanging United States mail; that the appellant railroad companies furnished the appellant, Hunter, as their servant, to load and unload the mail into and from the door of the mail car in which the appellee was engaged in discharging his duties as mail clerk; and that it was the said Hunter's duty to take the sacks or pouches of mail from a truck which was placed on the platform by the door of the mail car, and place them in the door of the car within reach of the appellee, whose duty it was to then read the labels on the pouches or sacks of mail, and place them where they properly belonged in the car.

The declaration further alleged that at the time the appellee received his injury, there was an usually large amount [fol. 314] of mail accumulated at Jackson on account of the flood stages of the Mississippi River which had interrupted the railroad crossings between Vicksburg and St. Louis; that the appellant, Hunter, was loading the mail into the mail car faster than it could be removed and placed by the appellee; that the mail was being loaded as hurriedly as possible to prevent the delay of the train; that, under these conditions, the porter, Hunter, had stacked or piled up mail pouches or sacks in the door of the car to a height of about two feet; that he carelessly pitched or threw a large sack of mail over the pile of mail in the door of the car, and into the aisle thereof, which struck the appellee on his leg, thereby bruising it; and that from this bruise and its subsequent developments, the appellee suffered much pain and a permanent injury.

The appellant, Jim Hunter, was a resident citizen of Hinds County, and process was served on him and the appellant, Illinois Central Railroad Company, in Hinds County, while the appellant, Yazoo & Mississippi Valley

Railroad Company, was summoned by service on its agent in Lauderdale County. The appellant, Hunter, and the Yazoo & Mississippi Valley Railroad Company, filed applications for a change of venue to Hinds County, the county of the household and residence of the said Hunter, the application of the said Hunter alleging that the Yazoo and Mississippi Valley Railroad Company was a domestic corporation domiciled in Hinds County, Mississippi, and that the cause of action accrued in that county; that the co-defendant, the Illinois Central Railroad Company, was a foreign corporation having no officer or agent in Lauderdale county; that no part of its line of railroad ran through that county, but that it did have agents and a line of railroad in Hinds County; and that the declaration stated no cause of action against the Yazoo & Mississippi Valley Railroad Company. The applications for a change of venue were overruled, and the action of the court in so doing is [fol. 315] *is* assigned as error.

Upon the overruling of this motion for a change of venue, the appellants filed a plea of the general issue and gave notice thereunder of special defensive matters, among others being; that it was expressly provided in the regulations prescribed by the United States, through its Postmaster General, governing transportation of mail by railroads, that "railroads companies must furnish the men necessary to handle the mails, to load the same into, and receive them from, the doors of the railway postoffice cars, and to load and pile the mails in, and unload them from, storage and baggage cars, under the direction of the transfer clerk, or clerk in charge of the car, if one is on duty"; that there was present on duty a transfer clerk and also a clerk in charge of the car, neither of whom was an employee of either of the defendants but both employees of the United States Government; that in loading and piling the mail into the car, the appellant, Hunter, was in no way under the direction or control of the defendant railroad companies, or either of them, but was, on the contrary, under the direction and control of the transfer clerk, or clerk in charge of the car; that it was their duty to direct the said Hunter as to the manner in which he should load and pile the said mails into the car, and to control him therein; and that neither of the defendant railroad companies was under any duty or obligation to control or direct him in loading, piling, and handling

the mail, nor was either of the defendant railroad companies in any way responsible or liable for any improper or negligent handling or loading of said mails by the said Hunter.

The uncontroverted testimony shows that the train on which the appellee was engaged as a mail clerk had stopped at Jackson; that the appellee was in the mail car engaged in loading, or receiving into the car, mail which had accumulated for transportation on that train, the mail being placed in the doorway of the car by the porter, Hunter; that the [fol. 316] mail pouches or sacks were loaded on a truck at the Jackson depot, and the truck was pulled alongside of the door of the mail car, the floor of the truck being about 8 inches lower than the floor of the car; that the porter stood on the truck and placed the bags of mail in the door of the mail car, and from there the appellee would take them to the proper place in the car. The mail compartment of this car was approximately 20 feet long by 9 feet wide; and the side door into which the mail was being placed was 2 feet and 10 inches wide, and about 6 feet high. Across this door was a catcherarm which was used in taking the mail pouches from mail cranes while the train was in motion. The various iron rods constituting this catcherarm were so placed across the door that there was left an opening through which mail could be loaded from the truck, only 2 feet and 10 inches wide at the floor, and 38 inches high on one side and twenty-eight inches high on the other.

By reason of flood conditions in the Mississippi River and the blocking of railroad crossings north of Vicksburg, there was a large accumulation of mail at Jackson; and an unusual amount of mail was being hurriedly loaded and placed in the door of the car faster than the appellee could remove it, with the result that a pile of mail, approximately two feet high, had accumulated in the door. At this point in the loading there remained on the truck to be loaded four large bags of mail, weighing about 125 pounds each. One of these large bags was placed on top of the pile of pouches or bags in the door, and was removed therefrom by the appellee, and while he was standing in the aisle of the car reading the label on this bag, the appellant, Hunter, took a second large sack of mail and shoved it under the catcherarm onto the pile of mail in the doorway, or threw it over the pile of mail into the aisle. Upon the latter point, the evidence is con-

flicting. In any event, the sack of mail did not stop on top of the pile of mail, but fell into the aisle of the car, where it struck the appellee's leg, causing an injury thereto from [fol. 317] which very serious consequences followed.

As to the relation of the appellant, Hunter, to the appellant railroad companies at the time of the injury, there was testimony to the effect that all the railroad employees at the Jackson depot were carried on the payroll of the Illinois Central Railroad Company; that under the postal regulations the railroad companies transporting mail were required to furnish men to handle and load the mails into the cars; that under an arrangement between the appellant railroad companies, the employees of the Illinois Central Railroad Company handled all the work pertaining to the Yazoo & Mississippi Valley trains while in the Jackson depot; and that the employees who were furnished to handle the mail worked under the sole and exclusive direction and supervision of the mail transfer clerk, or clerk in charge of the mail car, who were United States Government employees, and that the railroad companies had no supervisions over or control of such employees while they were engaged in handling and loading and unloading the United States mails.

The applicable postal rule and regulation which was offered in evidence reads as follows:

"Sec. 1293. Railroad Companies shall furnish the men necessary to handle the mails, load them into, and receive them from, the doors of the Railway postoffice cars, and to load and pile the mails in, and unload them from, storage and baggage cars, under the direction of the transfer clerk, or clerk in charge of the car, if one is on duty, except as provided in Section 1290."

In our opinion, the declaration states a cause of action against the Yazoo & Mississippi Valley Railroad Company in that it specifically charges that the appellee's injuries were the result of the negligence of the appellant, Hunter, and that he was a servant of the said railroad, and was engaged in and about his master's business at the time [fol. 318] the injury was inflicted. The said railroad company owns and operates a line of railroad in and through Lauderdale County; consequently, the Circuit Court of that County had jurisdiction of the cause of action, and no error

was committed in overruling the motion for a change of venue.

Upon the question of whether or not the appellant, Hunter, was guilty of negligence which caused or contributed — the injury sustained by the appellee, we think the peremptory instruction requested by him was properly refused, and no error as to this appellant which would warrant a reversal of the cause is assigned or argued; consequently, as to the appellant, Hunter, the judgment of the court below will be affirmed.

The appellant railroad companies contend that the peremptory instruction requested by them should have been granted, because the appellant, Hunter, was not the servant of them in the work of loading the mails into the mail car, but that in performing this work he was under the sole supervision, direction, and control of the government employees.

The testimony as to the status of the appellant, Hunter, was to the effect that all railroad employees at the Jackson depot, including Hunter, were in the general employment of the Illinois Central Railroad Company, and by some arrangement between that company and the Yazoo & Mississippi Valley Railroad Company, the Illinois Central Railroad Company furnished all employees necessary to handle the work pertaining to the Yazoo & Mississippi Valley trains while in the Jackson depot; that under the contract between the said railroad companies and the United States government for the transportation of the mails, and the rules and regulations governing the handling and transportation of mail, the railroad companies were required to furnish the men necessary to handle the mails, load them into, and receive them from, the doors of the railway postal cars, and to load and pile the mails in, and unload them [fol. 319] from, storage and baggage cars; that in pursuance of, and in compliance with, section 1293 of the postal rules and regulations so requiring, the appellant, Hunter, was designated to so handle the mails on the day that the appellee received his injury; and that while he engaged in these duties he was under the direction and control of the United States mail clerk, or clerk in charge of the mail car, if one was on duty. The testimony was to the further effect that on the days the porter, Hunter, was designated to handle the mails, he was engaged exclusively in the mail

service, loading mails onto trucks in the mail room at the depot, carrying it to the various trains, and loading it into the postal cars. The appellee testified that he was neither a transfer clerk nor the clerk in charge of said mail car, but the testimony shows that the clerk in charge was present in the mail car while the mail was being loaded, and at the time of the accident, and the transfer clerk was present while the mails were being loaded and at the time of appellee's injury. The appellee and the other two clerks who were in the car stated that neither of them had any authority to supervise or control the porter, Hunter, but this testimony was in direct conflict with Section 1293 of the Postal Rules and Regulations, quoted above; and it was admitted that where these rules and regulations covered any matter, they controlled, and that under these rules and regulations the porter was loading mail under the direction and supervision of the transfer clerk, or clerk in charge.

From the very nature of the employment of the porter, Hunter, and the character of work in which he was engaged at the time of appellee's injury, it would appear to be necessary for the government employees engaged in receiving and placing the mail in the car to have supervision and control of those engaged in delivering it into the car; and to so fix this right of supervision and control was the manifest purpose of Section 1293 of the Postal Rules and Regulations, quoted above. The liability of a master for a negli- [fol. 320] gent act for one who is in his general service but at the time of the act is engaged in the service, of third person, was fully discussed by the Supreme Court of the United States in the case of Standard Oil Company v. Anderson, 212 U. S. 215, 53 L. Ed. 480, where it was said:

"That the master is answerable for the wrongs of his servant, not because he has authorized them nor because the servant, in his negligent conduct, represents the master, but because he is conducting the master's affairs, and the master is bound to see that his affairs are so conducted that others are not injured. * * * The master's responsibility cannot be extended beyond the limits of the master's work. If the servant is doing his own work or that of some other, the master is not answerable for his negligence in the performance of it. It sometimes happens that one wishes a certain work to be done for his benefit, and neit[illegible]ns

persons in his employ who can do it nor is willing to take such persons into his general service. He may then enter into an agreement with another. If that other furnishes him with men to do the work, and places them under his exclusive control in the performance of it, those men become pro hac vice the servants of him to whom they are furnished. But, on the other hand, one may prefer to enter into an agreement with another that that other, for a consideration, shall himself perform the work through servants of his own selection, retaining the direction and control of them. In the first case, he to whom the workmen are furnished is responsible for their negligence in the conduct of the work, because the work is his work, and they are, for the time, his workmen. In the second case, he who agrees to furnish the completed work through servants over whom he retains control is responsible for their negligence in the conduct of it, because though it is done for the ultimate benefit of the other, it is still, in its doing, his own work. [fol. 321] To determine whether a given case falls within the one class or the other we must inquire whose is the work being performed—a question which is usually answered by ascertaining who has the power to control and direct the servants in the performance of their work."

Under their contract, and the rules and regulations of the government in reference thereto, the obligation assumed by these railroad companies with reference to handling mails was not to load and unload them, but was specifically limited to furnishing the men necessary to handle the mails, load them into, and receive them from, the doors of the railway mail cars, which was to be done under the direction of the mail transfer clerk, or clerk in charge of the car, if one was on duty; and in the matter of loading mails into the postoffice cars, the porter furnished for that purpose was not engaged in the business of the railroad companies, but was engaged in an- about the business of the government. As was said by the Circuit Court of Appeals in the case of Burgess v. Standard Oil Co., 262 Fed. 767, "the sole reason why the master is responsible for the wrongs of his servant is because he is doing the master's business." It is admitted that the porter, Hunter, was in the general employment of the appellant railroad companies, but that circumstance does not fix liability

against them for his negligence "if he was not in point of fact, their servant at the time, in the sense of being actually employed to do their work." Rouke v. White-Moss Colliery Co., L. R. 2 C. P. Div. 205.

That the status of the porter, Hunter, at the time of his alleged negligent act while loading mail into the postoffice car was not that of a servant of the appellant railroad companies is determined by the fact that he was at the time engaged in the business of the government, under the expressly reserved right of the government employees on the car to supervise and control him in doing the work. For [fol. 322] the reasons above indicated, we conclude that the peremptory instruction requested by the appellant railroad companies should have been granted; consequently, the judgment of the court below, in so far as they were held liable to the appellee, will be reversed, and judgment will be entered here for them.

Affirmed in part and reversed in part.

[File endorsement omitted.]

[fol. 323] IN SUPREME COURT OF MISSISSIPPI

29078

THE YAZOO & MISSISSIPPI VALLEY R. R. Co., ILLINOIS CENTRAL R. R. Co., and JIM HUNTER

vs.

JESSE H. DENTON

JUDGMENT—April 13, 1931

This cause having been submitted at a former term of this court on the record herein from the Circuit Court of Lauderdale County and this court having sufficiently examined and considered the same and being of opinion that there is partial error therein, doth order and adjudge that the judgment of said Circuit Court rendered in this case at the June term, 1930, on June 18th, 1930 be and the same is hereby reversed as to the appellants the Yazoo & Mississippi Valley Railroad Company and the Illinois Central

Railroad Company, and judgment entered here for said appellants and that said judgment be affirmed as to appellant Jim Hunter: Now, therefore it is ordered and adjudged that the appellees do have and recover nothing of and from the appellants, The Yazoo & Mississippi Valley Railroad Company and the Illinois Central R. R. Company. It is further ordered and adjudged that the appellees do have and recover of and from appellant Jim Hunter the sum of Twelve Thousand Dollars, the amount of the judgment in the court below together with the further sum of Six Hundred Dollars being damages at the rate of 5 percentm as allowed by law and also interest on the sum of Twelve Thousand Dollars from date of judgment in the court below until paid at the rate of 6 percentym per annum and also the costs of this cause in the court below. It is further ordered and adjudged that the appellee do have and recover of and from appellant Jim Hunter and The United States Fidelity & Guaranty Company, surety in the appeal bond the costs of this appeal to be taxed, etc.

[fol. 324] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

SUGGESTION OF ERROR—Filed April 25, 1931

Now comes Jesse H. Denton, the appellee, in the above styled and numbered cause and files this his suggestion of erro-s to the decision of this Court rendered April the 13th, 1931, and would suggest unto the Court that in rendering the opinion in said cause that the Court made the following errors to-wit:

1st. It appears from the opinion that the Court construed section 1293 of the postal laws, rules and regulations of the U. S. as giving the clerk in charge and the transfer clerk the right of supervision over the defendant, Jim Hunter, when said section only gives the right of direction, and supervision and direction, is two different propositions of laws, and at the time of the injury the defendant railroad companies had a male porter supervisor on duty which shows that supervision of mail porters was not relinquished

by defendants and in this particular case the right to direct under the proof in the record carried with it absolutely no authority to enforce any directions given therefore no authority of supervision.

2nd. The Court in their opinion and decision apparently overlooked the fact that the defendant railroad companies was paid for the transportation of the mail and that said compensation paid for the services of the porters that was furnished by said railroad companies for handling the mail and the work that Jim Hunter was doing at the time of the Injury here complained of was a part of the transportation [fol. 325] of the mail contracted for by the said railroad companies. Appellee contends the defendant, Jim Hunter, was serving his master, the defendant railroad companies at the time of the injury here complained of in accordance with the masters general contract to handle and transport the mail.

3rd. That the defendant, Jim Hunter, did not lose his identity as the servant of the defendant railroad companies by virtue of section 1293 of the postal laws and regulations of the U. S. as same gives no authority to manage or supervise.

4th. The doctrine of the loaned servant or pro hac vice servant does not apply in this case for several reasons. The defendant railroad companies having a general contract to do this particular work of handling mail with, by and through their servants or porter to be furnished by them at their expense and the defendant Illinois Central Railroad Company having then on duty a porter supervisor and not releasing Jim Hunter from their supervision and the arrangements for handling the mail being a permanent arrangement and the said doctrine under which this decision was apparently rendered being intended to cover only temporary arrangements. Therefore, the appellee contends that this cause should be considered in the light of this suggestion of errors and this suggestion of errors sustained and judgment rendered accordingly.

Respectfully, (S.) J. V. Gipson, Attorney for Appellee.

I, J. V. Gipson, attorney for appellee hereby certify that I have this day mailed a true copy of this suggestion of

errors postage prepaid to Messrs. Bozeman and Cameron attorneys for appellants to their office in the Miazza-Woods Building, Meridian, Miss.

[fol. 326] Witness my signature this the 24th day of April, 1931.

(S.) J. V. Gipson, Attorney for Appellee.

[File endorsement omitted.]

IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER OVERRULING SUGGESTION OF ERROR—May 4, 1931

This cause coming up on suggestion of error filed herein and the court having sufficiently examined and considered the same it is ordered and adjudged that said suggestion of error be and the same is hereby overruled.

[fols. 327 & 328] Clerk's certificate to foregoing transcript omitted in printing.

Supreme Court of the United States

Order Allowing Certiorari—Filed October 19, 1931

The petition herein for a writ of certiorari to the Supreme Court of the State of Mississippi is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

FILED
JUL 18 1931
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 242

JESSE H. DENTON, PETITIONER,

vs.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, THE ILLINOIS CENTRAL RAILROAD COMPANY, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI AND BRIEF IN SUPPORT THEREOF.

JOHN P. BRAMHALL,
Counsel for Petitioner.

JAMES E. McCABE,
J. V. GIPSON,
Of Counsel.

( )

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No.

JESSE H. DENTON, PETITIONER,

vs.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, THE ILLINOIS CENTRAL RAILROAD COMPANY, AND JIM HUNTER, COLORED, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Jesse H. Denton, petitioner, prays that a writ of certiorari issue to review the judgment (R., pp. 224-225) of the Supreme Court of the State of Mississippi, which is the highest court in said State, to the end that the rights and liabilities of the parties may be determined in accordance with the Federal statutes, the United

States postal laws and regulations of 1924, and the decisions of this Honorable Court on the questions involved herein.

Statement.

This case grew out of an injury sustained by petitioner on April 21, 1927 (R., p. 36), while engaged in his duties as a United States Railway mail clerk in a railway postal car which was standing in the passenger station of the respondent, the Yazoo & Mississippi Valley Railroad Company, at Jackson, Mississippi.

The Illinois Central Railroad Company, also respondent herein, owned and controlled the Yazoo & Mississippi Valley Railroad Company (R., p. 32) and maintained for their joint use the passenger station at Jackson, Mississippi (R., p. 32), where large quantities of United States mail was transferred to and from respondents lines of railway (R., p. 35), and furnished porters to transfer mail to and from the postal cars on the Yazoo & Mississippi Valley Railroad Company at Jackson, Mississippi (R., p. 33).

Another respondent herein, Jim Hunter, a porter, whose negligence it is charged caused the injuries to petitioner, was hired and paid by the respondent, the Illinois Central Railroad Company, who alone had the right to discharge him (R., pp. 20-21).

Action was commenced herein on October 22, 1929, in the Circuit Court of Lauderdale County Mississippi, against all of the respondents (defendants below), the petitioner alleging that respondent railroad companies (R., pp. 1-6) were engaged in the transportation of United States mail and employed, in pur-

suance thereto, porters to load, unload, and transfer mail, and that respondent, Jim Hunter, was employed as a porter at Jackson, Mississippi, and while so employed negligently (R., pp. 2-4) threw a bag of mail into the aisle of a postal car, causing the injury complained of by petitioner (R., p. 39).

This action was commenced at the direction of the United States Employees' Compensation Commission under Section 26 of the United States Employees' Compensation Act, approved September 7, 1916 (R., p. 18), to recover damages on account of an injury sustained by Federal employees while engaged in the United States railway mail service.

The respondents each filed pleas to petitioner's declaration in the trial court and the respondent railroad companies set up as one of their numerous defenses Section 1293, paragraph (2), of the United States Postal Laws and Regulations of 1924 (R., p. 14), which is in words and figures as follows:

> "Railroad companies shall furnish the men necessary to handle the mails, to load them into and receive them from the doors of railway post-office cars, and to load and pile the mails in and unload them from storage and baggage cars, under the direction of the transfer clerk or clerk in charge of the car if one is on duty, * * *"

and these regulations were admitted in evidence at the instance of the respondent railroad companies (R., p. 166).

On June 18, 1930, this case was submitted to a jury on the issue joined and the respondent railroad com-

panies were given an instruction embracing (R., p. 198) Section 1293, paragraph (2), of the United States Postal Laws and Regulations of 1924 (*supra*), and the jury returned a verdict in behalf of the petitioner (plaintiff below) in the sum of $12,000.00 (R., p. 204).

On June 19, 1930, motion of respondents to set aside the verdict and judgment rendered against them on June 18, 1930, was overruled, to which action and judgment of the court the defendants excepted (R., p. 208).

On August 19, 1930, the respondents, by proper application, appealed from the judgment of the trial court (R., pp. 208-209) to the Supreme Court of Mississippi (R., pp. 208-209).

On August 27, 1930, respondent Jim Hunter, as principal, executed an appeal bond in the sum of $400.00 obligating himself and his guarantors to satisfy costs of appeal only (R., p. 209).

On August 27, 1930, the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company, principals, executed an appeal bond in the sum of $24,000, wherein they and their guarantors obligated themselves to pay and satisfy the judgment complained of and all costs of appeal in case the judgment below was affirmed (R., p. 209).

On April 13, 1931, the Supreme Court of the State of Mississippi entered a judgment (R., pp. 224-225) reversing the judgment of the trial court in the above-entitled cause as to the respondents, the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company, and affirmed the judgment of the trial court as to Jim Hunter (Opinion cited, 133 South.

ern Reps. 656, April 13, 1931), the court holding "That the status of the porter, Hunter, at the time of his alleged negligent act while loading mail into the post office car was not that of a servant of the appellant railroad companies, is determined by the fact that he was at the time engaged in the business of the government, under the expressly reserved right of the government employees on the car to supervise and control him doing the work" (R., p. 224).

On April 25, 1931, petitioner filed suggestion of errors and motion for rehearing (R., pp. 225-226).

On May 4, 1931, the Supreme Court of Mississippi overruled petitioner's suggestion of errors and motion for rehearing (R., p. 227).

Questions Presented.

(1) The controlling question is whether Jim Hunter, the porter, was a servant of the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company or of the United States Government at the time petitioner Denton received his injuries.

Supplemental Questions.

(*a*) Whether the provisions of Section 1293, paragraph (2), of the United States Postal Laws & Regulations of 1924 changed the status of porters furnished by railroads as a part of their contract with the Government for the transportation of United States mail so that such porter while loading, unloading and transferring United States mail became an employee of the United States Government, thus and thereby relieving the railroads from liability for injuries sustained by

railway postal clerks while engaged in the performance of their duties in railway postal cars on account of the negligent acts of such porters.

(*b*) Whether the services performed by porters employed by railroads in handling United States mail are not a part of the services required to be performed by railroads incident to the transportation of United States Mail.

Reasons for Granting Writ.

(1) The Supreme Court of the State of Mississippi has construed a regulation of an executive department of the United States Government, viz., Section 1293, paragraph (2), (*supra*), United States Postal Laws & Regulations of 1924 to mean that porters in the service of and furnished by the railroads to facilitate the transportation of United States mail are employees of the United States Government while engaged in handling mail, thus and thereby relieving the railroads from the negligent acts of such porters on account of injuries sustained by employees of the United States Government (133 Southern Rep. 656, 1931).

(2) That the decision of the Supreme Court of the State of Mississippi in the above-entitled cause is in conflict with the principle announced by this Honorable Court in the case of Standard Oil Company *v.* Anderson, 212 U. S. 215, 53 L. Ed. 480.

(3) The Supreme Court of Mississippi had decided a Federal question of substance in a way probably not in accord with the applicable decisions of this Court.

(4) The Supreme Court of Mississippi has decided questions of Federal law in a way that is untenable and in conflict with the weight of authority.

For the foregoing reasons it is respectfully submitted that this petition should be granted.

JOHN P. BRAMHALL,
Counsel for Petitioner.

Of Counsel:

JAMES E. McCABE.
J. V. GIPSON.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. ---

JESSE H. DENTON, PETITIONER,

vs.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, THE ILLINOIS CENTRAL RAILROAD COMPANY, AND JIM HUNTER, COLORED, RESPONDENTS.

BRIEF FOR PETITIONER.

Opinion Below.

The opinion of the Supreme Court of the State of Mississippi was rendered on April 13, 1931, and is incorporated in the record at pages 216-224, and is reported in 133 Southern Rep. 656.

Jurisdiction.

The jurisdiction of this Court rests on 5 U. S. C. A., Section 22 (R. S., Sec. 161); United States Postal Laws

and Regulations of 1924, Section 1286, paragraph (5); Section 1288 and Section 1293, paragraph (2); 39 U. S. C. A., Section 538 (July 28, 1916, c. 261; Sec. 5, subd. 13, 39 Stat. 427); 39 U. S. C. A., Section 541 (July 28, 1916, c. 261; Section 5, subd. 27, 39 Stat. 429).

Statement of Case.

A statement of this case is incorporated in the petition for writ of certiorari, commencing at page 1 thereof.

Questions of Law Involved.

(1) Was Jim Hunter, the porter, a servant of the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company, respondents herein, at the time of the injury complained of?

(2) Was the work performed by Jim Hunter as a porter while handling United States mail a part of the services required of the respondent railroad companies in the transportation of United States mail?

(3) If these questions are answered in the affirmative, it is clear that a writ of certiorari should be granted and the decision of the Supreme Court of Missippi reversed as to the respondents, the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company.

Specifications of Error.

(1) The court below erred in holding that Jim Hunter, a porter in the service of the respondent railroad

companies, was at the time petitioner Denton received his injuries, a servant of the United States Government.

(2) The court below erred in holding that the language used in Section 1293, paragraph (2), of the United States Postal Laws & Regulations of 1924 changed the status of Jim Hunter, the porter, from that of a servant of the respondent railroad companies to that of a servant of the United States Government.

(3) The court below erred in reversing the judgment of the trial court as to the respondents, the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company.

ARGUMENT.

Points and Authorities.

(1) Whose servant was Jim Hunter, the porter, at the time petitioner Denton received his injuries?

Jim Hunter was hired and paid by the Illinois Central Railroad Company (R., p. 33) and by a joint arrangement (R., p. 32) he performed work for both respondent railroad companies as a porter handling baggage, taking care of switches and handling United States mail (R., p. 29).

39 U. S. C. A., Section 538 (Sec. 5, subd. 13, 39 Stat. 427), provides as follows:

> FACILITIES FOR CARRYING AND HANDLING MAILS. —"Railroad companies carrying the mail shall furnish all necessary facilities for caring for and handling them while in their custody, etc."

39 U. S. C. A., Section 541 (Sec. 5, subd. 27, 39 Stat. 429, provides as follows:

> TRANSPORTATION REQUIRED IN MANNER, UNDER CONDITIONS, AND WITH SERVICE PRESCRIBED BY POSTMASTER GENERAL; COMPENSATION THEREFOR.—All railway common carriers are hereby required to transport such mail matter as may be offered for transportation by the United States in the manner, under the conditions, and with the service prescribed by the Postmaster General and shall be entitled to receive fair and reasonable compensation for such transportation and for the service connected therewith.

39 U. S. C. A., Section 538, provides without equivocation, that railroad companies shall furnish all necessary facilities for caring for and handling mail while in their custody, and the services of the porters employed by the railroads for transferring United States mail, as in the instant case, is merely the performance of a part of the duties which are required from railroads by the Federal statutes incident to the transportation of mail.

39 U. S. C. A., Section 541 (Sec. 5, subd. 27, 39 Stat. 429), provides that all railway common carriers are required to transport such mail as may be offered for transportation by the United States in the manner, under the conditions, and with the service prescribed by the Postmaster General and shall be entitled to received fair and reasonable compensation for such transportation and for the service connected therewith.

The foregoing Federal statutes make it mandatory upon every common carrier to transport United States

mail, and it also provides that they shall receive a fair compensation for such transportation and for the service connected therewith. What service, may we ask? The service rendered in transferring mail by porters at railway transfer points, which necessarily must include the loading and unloading of mail by such porters.

These two provisions alone, if no other authority was cited, is compelling, that the work of porters furnished by the railroads in handling United States mail at transfer points is a part of the work encumbent upon the railroads to be performed by them, for which they are paid a fair and reasonable compensation as a service connected with the transportation of United States mail.

5 U. S. C. A., Sec. 22, provides as follows:

> DEPARTMENTAL REGULATIONS.—The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and the preservation of the records, papers and property appertaining to it (R. S., Sec. 161).

This statute has authorized the heads of the executive department of the United States Government to make regulations for their respective departments and, pursuant thereto, the Postoffice Department promulgated, on July 1, 1924, the following postal laws and regulations respecting the transportation and handling of United States mail, viz:

SECTION 1286, Par. 5.—Any person acting for an advantage to himself or another, by authority or consent of the railroad company, and representing in any manner the interests of the company or railroad in its business transaction with the public, will be regarded as the company's agent or representative.

SECTION 1288.—At places where railroad companies are required to take the mails from and deliver them into post offices or postal stations or to transfer them to connecting railroads the persons employed to perform such service are agents of the companies and not employees of the postal service, and need not be sworn; but such persons shall be more than 16 years of age and of suitable intelligence and character. Postmasters shall promptly report any violation of this requirement to the superintendent of Railway Mail Service.

SECTION 1293, Para. (2). Railroad companies shall furnish the men necessary to handle the mails, to load them into and receive them from the doors of railway post-office cars, and to load and pile the mails in and unload them from storage and baggage cars, under the direction of the transfer clerk or clerk in charge of the car if one is on duty, etc.

The three preceding sections of the Postal Regulations are based upon 39 U. S. C. A. 538 (Sec. 5, subd. 13, 39 Stat. 427), and were promulgated for the purpose of carrying into effect the provisions of that statute.

Force and Effect of Regulations as Law.

A regulation of a department, in conformity to a particular Act of Congress, becomes a part of the law and is of as binding force as if incorporated in the body of the law itself. Caha *v.* U. S. (Kan. 1894), 14 S. Ct., Rep. 513, 152 U. S. 221; 38 L. Ed. 415, *Ex parte* Reed (1879), 100 U. S. 13, 25 L. Ed. 538; Wilkins *v.* U. S., 175 U. S. 727, 44 L. Ed. 339.

Judicial Notice of Regulations.

The courts take judicial notice of the regulations of executive departments. *Ex parte* Reed (1879), 100 U. S. 13, 25 L. Ed. 538; Wilkins *v.* U. S., 175 U S. 727, 44 L. Ed. 339.

Acquiescence in Postal Regulations.

Section 1288 (*supra*) of the United States Postal Laws and Regulations of 1924 have been in effect since July 1, 1924, and it has been held that where for a long time a railroad company acquiesced in a postal regulation applicable to contracts and statutes relating to the carrying of mails, such acquiescence will not be disregarded without most persuasive reasons. Great Northern R. Co. *v.* U. S. (Minn. 1916), 236 Fed. 433, 149 C. C. A. 485.

Conclusion.

The Supreme Court of Mississippi in rendering its opinion in the case at bar (R., pp. 216-224) cited Standard Oil Co. *v.* Anderson (212 U. S. 215, 53 L. Ed. 485, as

authority for reversing the judgment of the trial court as to respondents, the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company.

Petitioner contends that the opinion of the Supreme Court of Mississippi in this case (133 S. Rep. 656) is not only in direct conflict, both in letter and spirit, with the opinion of this Honorable Court in Standard Oil Co. *v.* Anderson, *supra,* but is out of harmony with the settled opinions of both the Federal and the State courts on the question involved herein.

It is undisputed that Jim Hunter, the porter, was in the general employment of respondent railroad companies (defendants in the trial court), who selected him, paid him his wages (R., pp. 20-21), and had the right to discharge him for incompetency, misconduct, or for any other reason.

Section 1293, paragraph (2), of the United States Postal Laws & Regulations of 1924 provides that the railroads shall furnish porters for transferring mails, meaning thereby that railroad companies were to furnish the work or human effort that was necessary for the transfer of the mail.

It is true, the porters were required to work under the direction of certain postal employees, they having authority to suggest and point out to such porters the mails to be transferred and the cars into which it was to be loaded or from which it was to be unloaded, but this is not sufficient to suspend the relation of master and servant as between Jim Hunter, the porter, and respondent railroad companies, thereby making him a servant of the United States Government for a few

fleeting moments, during which time petitioner suffered the injuries complained of.

Quoting from the opinion of the Supreme Court of the United States in Standard Oil Co. *v.* Anderson, *supra*, it was said:

> "When one large general work is undertaken by different persons, doing different parts of the same undertaking, there must be cooperation and coordination or there will be chaos. The giving of signals under the corcumstances of this case was not the giving of orders, but of information; and the obedience to those signals showed cooperation rather than subordination, and is not enough to show that there has been a change of master."

In Standard Oil Company *v.* Anderson, 212 U. S. 215, 226, the court quoted at length from Driscoll *v.* Towle, 181 Mass. 416, 63 N. E. 922. The opinion in the Driscoll case was delivered by Chief Justice Holmes, now Mr. Justice Holmes, and we quote the following from this opinion:

> "But the mere fact that a servant is sent to do work pointed out to him by a person who has made a bargain with his master does not make him that person's servant; more than that is necessary to take him out of the relation established by the only contract which he has made, and to make him a voluntary subject of a new sovereign—as the master sometimes was called in the old books."

The opinion of this Honorable Court in Standard Oil Company *v.* Anderson, *supra*, and the opinion delivered by Chief Justice Holmes in Driscoll *v.* Towle, *supra*, are decisive on the question of master and servant involved in this case.

We therefore respectfully submit that the Supreme Court of the State of Mississippi in the above-entitled cause was in error, and that the writ of certiorari herein sought should be granted.

Respectfully submitted,

JOHN P. BRAMHALL,
Counsel for Petitioner.

Of Counsel:
JAMES E. McCABE.
J. V. GIPSON.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 242

JESSE H. DENTON, PETITIONER,

vs.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, THE ILLINOIS CENTRAL RAILROAD COMPANY, AND JIM HUNTER, COLORED, RESPONDENTS.

BRIEF OF PETITIONER.

JOHN P. BRAMHALL,
Counsel for Petitioner.

J. V. GIPSON,
JAMES E. McCABE,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

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YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, THE ILLINOIS CENTRAL RAILROAD COMPANY, AND JIM HUNTER, COLORED, RESPONDENTS.

The above entitled cause is now before this Honorable Court on writ of certiorari granted October 19th, 1931.

BRIEF OF PETITIONER.

Statement of Case.

This case grew out of an injury sustained by petitioner on April 21, 1927 (R., p. 36), while engaged in his duties as a United States Railway mail clerk

in a railway postal car which was standing in the passenger station of the respondent, the Yazoo & Mississippi Valley Railroad Company, at Jackson, Mississippi. The Illinois Central Railroad Company, also respondent herein, owned and controlled by the Yazoo & Mississippi Valley Railroad Company (R., p. 32) and maintained for their joint use the terminal passenger station at Jackson, Mississippi (R., p. 32), where large quantities of United States mail was transferred to and from respondent's lines of railway (R., p. 35) and furnished porters to transfer mail to and from the postal cars on the Yazoo & Mississippi Valley Railroad Company, at Jackson, Mississippi (R., p. 33).

Another respondent herein, Jim Hunter, a porter, whose negligence it is charged caused the injury to petitioner, was hired and paid by the respondent herein, the Illinois Central Railroad Company, who had the exclusive right to discharge him (R., pp. 20-21).

Action was commenced herein on October 22, 1929, in the Circuit Court of Lauderdale County, Mississippi, against all of the respondents (defendants below), the petitioner alleging that respondent railroad companies (R., pp. 1-6) were engaged in the transportation of United States mail and employed in pursuance thereto, porters to load, unload, and transfer such mail, and that respondent, Jim Hunter, was employed as a porter at their terminal station at Jackson, Mississippi, and while so employed, negligently (R., pp. 2-4) threw a pouch of mail into the aisle of a

postal car causing the injury complained of by petitioner (R., p. 39).

This action was commenced at the direction of the United States Employees' Compensation Commission under Section 26, of the United States Employees' Compensation Act approved September 7, 1916 (R., p. 18), to recover damages on account of an injury sustained by a Federal employee while engaged in the United States Railway mail service (R., p. 117).

The respondents each filed pleas to petitioner's declaration in the trial court, and the respondent railroad companies set up among their numerous defenses, Section 1293, paragraph (2) of the United States Postal Laws & Regulations of 1924 (R., p. 14), which is in words and figures as follows:

> "Railroad companies shall furnish the men necessary to handle the mails, to load them into and receive them from the doors of railway post-office cars, and to load and pile the mails in and unload them from storage and baggage cars, under the direction of the transfer clerk or clerk in charge of the car if one is on duty, * * *"

and these regulations were admitted in evidence at the instance of the respondent railroad companies (R., p. 166).

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jury returned a verdict in behalf of the petitioner (plaintiff below) in the sum of $12,000.00 (R., p. 204).

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On April 13, 1931, the Supreme Court of the State of Mississippi entered a judgment (R., pp. 224-225) reversing the judgment of the trial court in the above-entitled cause as to the respondents, the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company, and affirmed the judgment of the trial court as to Jim Hunter (Opinion cited, 133 Southern Reps. 656, April 13, 1931), the court holding, "That the status of the porter, Hunter, at the time of his alleged negligent act while loading

mail into the post-office car was not that of a servant of the appellant railroad companies, is determined by the fact that he was at the time engaged in the business of the government, under the expressly reserved right of the government employees on the car to supervise and control him doing the work'' (R., p. 224).

On April 25, 1931, petitioner filed suggestion of errors and motion for rehearing (R., pp. 225-226).

On May 4, 1931, the Supreme Court of Mississippi overruled petitioner's suggestion of errors and motion for rehearing (R., p. 227).

Question Presented.

(1) Whether Jim Hunter, the porter, was an employee of the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company, or of the United States Government at the time petitioner, Denton, received his injuries.

Supplemental Questions.

(*a*) Was the work performed by Jim Hunter as a porter while handling United States mail a part of the services required of the respondent railroad companies in the transportation of United States mail?

(*b*) Whether the provisions of Section 1293, paragraph (2), of the United States Postal Laws & Regulations of 1924 changed the status of porters furnished by railroads as a part of their contract with the government for the transportation and handling of United States mail so that such porters while loading,

unloading and transferring United States mail became employees of the United States Government, thus and thereby relieving the railroads from liability for injuries sustained by railway postal clerks while engaged in the performance of their duties in railway postal cars on account of the negligent acts of such porters.

Specifications of Error.

(1) The court below erred in holding that Jim Hunter, a porter in the service of the respondent railroad companies, was at the time petitioner Denton received his injuries, a servant of the United States Government.

(2) The court below erred in holding that the language used in Section 1293, paragraph (2), of the United States Postal Laws & Regulations of 1924 changed the status of Jim Hunter, the porter, from that of a servant of the respondent railroad companies to that of a servant of the United States Government.

(3) The court below erred in reversing the judgment of the trial court as to the respondents, the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company.

ARGUMENT.

Points and Authorities.

(1) Whose servant was Jim Hunter, the porter, at the time petitioner Denton received his injuries?

Jim Hunter was hired and paid by the Illinois Central Railroad Company (R., p. 33) and by a joint

arrangement (R., p. 32) he performed work for both respondent railroad companies as a porter handling baggage, taking care of switches, and handling United States mail (R., p. 29).

It is the contention of the petitioner that the work performed by Jim Hunter, as a porter, while loading (handling) United States mail was a part of the service required of the respondent railroad companies in the transportation and handling of United States mail and that respondents were paid for that service by the United States Government as will be disclosed by the following provisions of the United States Statutes:

> **"39 U. S. C. A., 531. Rates of Payment for classes of routes. The rates of payment for the services authorized in accordance with this section shall be as follows, namely:**
>
> (*a*) Full railway post-office car service. For full railway post-office car mail service at not exceeding 21 cents for each mile of service by a sixty-foot car.
>
> In addition thereto he may allow not exceeding $4.25 as a combined initial and terminal rate for each one-way trip of a sixty-foot car.
>
> (*b*) Apartment railway post-office car service. For apartment railway post-office car mail service at not exceeding 11 cents for each mile of service by a thirty-foot apartment car and 6 cents for each mile of service by a fifteen-foot apartment car.
>
> In addition thereto he may allow not exceeding $2.75 as a combined initial and terminal rate for each one-way trip of a thirty-foot apartment car and $2 as a combined initial and term-

inal rate for each one-way trip of a fifteen-foot apartment car.

(*c*) Storage-car service. For storage-car mail service at not exceeding 21 cents for each mile of service by a sixty-foot car.

In addition thereto he may allow not exceeding $4.25 as a combined initial and terminal rate for each one-way trip of a sixty-foot car.

(*d*) Closed-pouch service. For closed-pouch service, at not exceeding 1½ cents for each mile of service when a three-foot unit is authorized, and 3 cents for each mile of service when a seven-foot unit is authorized.

In addition thereto he may allow not exceeding 25 cents as the combined initial and terminal rate for each one-way trip of a three-foot unit of service and 50 cents as a combined initial and terminal rate for each one-way trip of a seven-foot unit of service. (July 28, 1916, c. 261, Sec. 5, Subd. 8 (*a, b, c, e*), 39 Stat. 426)":

"**39 U. S. C. A., 533. Initial and terminal rates to cover certain expenses; varying allowances for full railway post-office cars, apartment railway post-office cars, and storage cars.** The initial and terminal rates provided for in section 531 of this title shall cover expenses of loading and unloading mails, switching, lighting, heating, cleaning mail cars, and all other expenses incidental to station service and required by the Postmaster General in connection with the mails that are not included in the car-mile rate. The allowance for full railway post-office cars, apartment railway post-office cars, and storage cars may be varied in accordance with the approximate difference in their respective cost of con-

struction and maintenance. (July 28, 1916, c. 261, Sec. 5, Subd. 8 (*g*), 39 Stat. 426)".

It will be noted that the initial and terminal rates provided for in Section 531 of this title (*supra*), shall cover expense of loading and unloading mail and establishes beyond controversy that the respondent railroads were paid for the service rendered by Jim Hunter, the porter, while loading and unloading mail at their terminal station at Jackson, Mississippi, and was performing the work of the respondent railroad companies for which he was employed by them to do, at the time said porter inflicted upon petitioner the injuries complained of.

The initial and terminal rates provided for in Section 531 (*supra*) as a remuneration to railroads for loading and unloading United States mail was merged with and added to the line rates provided for in said Section 531, on December 23, 1919. (See 56 I. C. C. Rep. 1.)

39 U. S. C. A., Section 538 (Sec. 5, Subd. 13, 39 Stat. 427), provides as follows:

> **Facilities for Carrying and Handling Mails.**—"Railroad companies carrying the mail shall furnish all necessary facilities for caring for and handling them while in their custody, etc."

39 U. S. C. A., Section 541 (Sec. 5, subd. 27, 39 Stat. 429), provides as follows:

> **Transportation Required in Manner, Under Conditions, and with Service Prescribed by Postmaster General; Compensation therefor.**—All railway common carriers are hereby required

> to transport such mail matter as may be offered for transportation by the United States in the manner, under the conditions, and with the service prescribed by the Postmaster General and shall be entitled to receive fair and reasonable compensation for such transportation and for the service connected therewith.

39 U. S. C. A., Section 538, provides without equivocation that railroad companies shall furnish all necessary facilities for caring for and handling mail while in their custody, and the services of the porters employed by the railroads for transferring United States mail, as in the instant case, is merely the performance of a part of the duties which are required from railroads by the Federal statutes incident to the transportation of mail.

39 U. S. C. A., Section 541 (Sec. 5, subd. 27, 39 Stat. 429), provides that all railway common carriers are required to transport such mail as may be offered for transportation by the United States in the manner, under the conditions, and with the service prescribed by the Postmaster General and shall be entitled to receive fair and reasonable compensation for such transportation and for the service connected therewith.

The foregoing Federal statutes make it mandatory upon every common carrier to transport United States mail, and it also provides that they shall receive a fair compensation for such transportation and for the service connected therewith. What service, may we ask? The service rendered in transferring mail by porters at railway transfer points, which

necessarily must include the loading and unloading of mail by such porters.

These two provisions alone, if no other authority was cited, is compelling, that the work of porters furnished by the railroads in handling United States mail at transfer points is a part of the work incumbent upon the railroads to be performed by them, for which they are paid a fair and reasonable compensation as a service connected with the transportation of United States mail.

The loaned servant doctrine can have no application to the case at bar because Jim Hunter, the porter, was the admitted servant of the respondent railroad companies and was doing the very work he was employed by them to do, and for which they were paid by the United States Government. It was the sole duty and obligation of the respondent railroad companies to load and unload the United States mail. It was none other than the work of the railroads that was being performed by the porter at the time petitioner was injured. It was a part of the business of the railroads as shown by the Federal Statute cited herein to not only transport the mail but to load and unload it at such places and under such conditions as prescribed by the Postmaster General.

The following United States statute provides who shall become employees of the Post Office Department:

> "**5 U. S. C. A., 365. Oath of Office.**—Before entering upon the duties, and before they shall receive any salary, the Postmaster General, and all persons employed in the postal service, shall respectively take and subscribe before some

> magistrate or other competent officer authorized to administer oaths by the laws of the United States, or of any State or Territory, the following oath or affirmation, etc."

The foregoing provisions prescribe the manner in which individuals may enter the postal service and this provision is mandatory. The government unlike individual employers provides by statute whom it shall employ and take into its service and confidence and only by such statute can persons enter the service of the United States Government.

It is not contended that Jim Hunter, the porter, whose negligence caused the damage complained of, was ever inducted into the service of the United States Government in the manner and form required by law.

5 U. S. C. A., Sec. 22, provides as follows:

> **Departmental Regulations.**—The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and the preservation of the records, papers and property appertaining to it (R. S. Sec. 161).

This statute has authorized the heads of the executive departments of the United States Government to make regulations for their respective departments and, pursuant thereto, the Post Office Department promulgated, on July 1, 1924, the following postal laws and regulations respecting the transportation and handling of United States mail, viz:

SECTION 1286, Par. 5.—Any person acting for an advantage to himself or another, by authority or consent of the railroad company, and representing in any manner the interests of the company or railroad in its business transactions with the public, will be regarded as the company's agent or representative.

SECTION 1288.—At places where railroad companies are required to take the mails from and deliver them into post offices or postal stations or to transfer them to connecting railroads the persons employed to perform such service are agents of the companies and not employees of the postal service, and need not be sworn; but such persons shall be more than 16 years of age and of suitable intelligence and character. Postmasters shall promptly report any violations of this requirement to the superintendent of the Railway Mail Service.

SECTION 1293, Par. (2).—Railroad companies shall furnish the men necessary to handle the mails, to load them into and receive them from the doors of railway post-office cars, and to load and pile the mails in and unload them from storage and baggage cars, under the direction of the transfer clerk or clerk in charge of the car if one is on duty, etc.

The three preceding sections of the Postal Regulations are based upon 39 U. S. C. A. 538 (Sec. 5, subd. 13, 39 Stat. 427), and were promulgated for the purpose of carrying into effect the provisions of that statute.

Force and Effect of Regulations as Law.

A regulation of a department, in conformity to a particular Act of Congress, becomes a part of the law and is of as binding force as if incorporated in the body of the law itself. Caha *v.* U. S. (Kan. 1894), 14 S. Ct. Rep. 513, 152 U. S. 221; 38 L. Ed. 415; *Ex Parte* Reed (1879), 100 U. S. 13, 25 L. Ed. 538; Wilkins *v.* U. S., 175 U. S. 727, 44 L. Ed. 339.

Judicial Notice of Regulations.

The courts take judicial notice of the regulations of executive departments. *Ex parte* Reed (1879), 100 U. S. 13, 25 L. Ed. 538; Wilkins *v.* U. S., 175 U. S. 727, 44 L. Ed. 339.

Acquiescence in Postal Regulations.

Section 1288 (*supra*) of the United States Postal Laws and Regulations of 1924 have been in effect since July 1, 1924, and it has been held that where for a long time a railroad company acquiesced in a postal regulation applicable to contracts and statutes relating to the carrying of mails, such acquiescence will not be disregarded without most persuasive reasons. Great Northern R. Co. *v.* U. S. (Minn. 1916), 236 Fed. 433, 149 C. C. A. 485.

Conclusion.

The Supreme Court of Mississippi in rendering its opinion in the case at bar (R., pp. 216-224) cited Standard Oil Co. *v.* Anderson (212 U. S. 215, 53 L. Ed. 485), as authority for reversing the judgment of

the trial court as to respondents, the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company.

Petitioner contends that the opinion of the Supreme Court of Mississippi in this case (133 S. Rep. 656) is not only in direct conflict, both in letter and spirit, with the opinion of this Honorable Court in Standard Oil Co. *v.* Anderson, *supra,* but is out of harmony with the settled opinions of both the Federal and the State courts on the question involved herein.

It is undisputed that Jim Hunter, the porter, was in the general employment of respondent railroad companies (defendants in the trial court), who selected him, paid him his wages (R., pp. 20-21), and had the right to discharge him for incompetency, misconduct, or for any other reason.

Section 1293, paragraph (2), of the United States Postal Laws and Regulations of 1924 provides that the railroads shall furnish porters for transferring mails, meaning thereby that railroad companies were to furnish the work or human effort that was necessary for the transfer of the mail.

It is true, the porters were required to work under the direction of certain postal employees, they having authority to suggest and point out to such porters the mails to be transferred and the cars into which it was to be loaded or from which it was to be unloaded, but this is not sufficient to suspend the relation of master and servant as between Jim Hunter, the porter, and respondent railroad companies, thereby making him a servant of the United States Government for a few

fleeting moments, during which time petitioner suffered the injuries complained of.

The collection and distribution of United States mail is a stupendous task undertaken by different persons doing different parts of the same undertaking. There must be co-operation and co-ordination or there would be chaos, and there must be somebody to point out, or indicate, the routing and disposition of the United States mails at railroad terminals and transfer points and this particular part of this vast undertaking has been delegated by the Postmaster General to the postal employees because of their knowledge and ability to determine the disposition of the mail handled by the railroad employees.

The word "direction" as used in Section 1293, Par. (2), of the United States Postal Laws and Regulations of 1924, could mean no more than TO POINT OUT, TO SHOW, or INDICATE to the porters employed by the railroads for loading and unloading United States mail, the disposition to be made of the various pouches or sacks of mails at railroad terminals and transfer points where the services of porters are required under the postal regulations.

Code Civ. Proc., 1022, provides that the report of a referee must direct the judgment to be entered thereon. Held, that the word "direct," as used in this connection, is synonymous with the words "to point out; to guide; to show; to regulate." Webst. Internat. Dict. And hence it cannot be held that the Legislature thereby intended that the referee should formulate the judgment, and that the only require-

ment was that the report should be sufficiently full to show the particular form and terms of the judgment to which the successful party was entitled thereunder. Hinds *v.* Kellogg, 13 N. Y. Supp. 922, 923.

Quoting from the opinion of the Supreme Court of the United States in Standard Oil Co. *v.* Anderson (*supra*), it was said:

> "When one large general work is undertaken by different persons, doing different parts of the same undertaking, there must be co-operation and co-ordination or there will be chaos. The giving of signals under the circumstances of this case was not the giving of orders, but of information; and the obedience to those signals showed co-operation rather than subordination, and is not enough to show that there has been a change of master."

In Standard Oil Company *v.* Anderson, 212 U. S. 215, 226, the court quoted at length from Driscoll *v.* Towle, 181 Mass. 416, 63 N. E. 922. The opinion in the Driscoll case was delivered by Chief Justice Holmes, now Mr. Justice Holmes, and we quote the following from this opinion:

> "But the mere fact that a servant is sent to do work pointed out to him by a person who has made a bargain with his master does not make him that person's servant; more than that is necessary to take him out of the relation established by the only contract which he has made, and to make him a voluntary subject of a new sovereign—as the master sometimes was called in the old books."

The opinion of this Honorable Court in Standard Oil Company *v.* Anderson, *supra,* and the opinion delivered by Chief Justice Holmes in Driscoll *v.* Towle, *supra,* are decisive on the question of master and servant involved in this case.

We therefore respectfully submit that the Supreme Court of the State of Mississippi in the above-entitled cause was in error, and that its decision should be reversed and the original judgment entered by the trial court reinstated.

Respectfully submitted,

JOHN P. BRAMHALL,
Counsel for Petitioner.

Of Counsel:
J. V. GIPSON,
JAMES E. McCABE.

(1289)

FILE COPY

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1931

JESSE H. DENTON,
Petitioner,

vs.

No. 242.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

H. D. MINOR,
CHARLES N. BURCH,
For Illinois Central Railroad Co. and The Yazoo & Mississippi Valley Railroad Co., Respondents.

R. V. FLETCHER,
A. S. BOZEMAN,
C. H. McKAY,
Of Counsel.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

This is a suit by petitioner Denton against The Yazoo & Mississippi Valley Railroad Company, the Illinois Central Railroad Company and Jim Hunter, a negro porter, to recover damages on the ground that petitioner, a railway mail clerk, was injured through the negligence of Hunter while he and Hunter were jointly engaged in loading sacks of mail on a railway mail car at Jackson, Mississippi—he being in the car and Hunter on the mail truck (p. 38). There was a judgment for petitioner against all three defendants for $12,000. On appeal to the Supreme Court of Mississippi, the judgment was affirmed as to Hunter but reversed as to the two railroad companies and the suit dis-

missed as to them. Thereupon this petition for certiorari was filed.

Among other defenses, the railroad companies set up the proposition that, while engaged in the work of loading, Hunter, the negro porter, was a servant of the federal government and for his negligence they were not responsible. In other words, the defense was the "lent servant" doctrine—this pursuant to the postal regulation presently to be quoted to the effect that the railroad companies should furnish the men necessary to load the mails into the cars "under the direction of the transfer clerk or clerk in charge of the car." The State Supreme Court sustained this defense and held that Hunter was, *pro hac vice,* the servant of the federal government and not of the carriers (pp. 222-224).

Yazoo, etc., R. Co. v. Denton, (Miss.) 133 So. Rep. 656.

BRIEF.

1. "All railway common carriers are hereby required to transport such mail matter as may be offered for transportation by the United States *in the manner, under the conditions, and with the service prescribed by the Postmaster General.*"

29 Stat. 429, Sec. 5, subd. 27.
39 U. S. C. A., Sec. 541.

2. Pursuant to this authority and duty, the Postmaster General promulgated, among others, the following regulation:

> "Railroad companies shall furnish the men necessary to handle the mails, to load them into and receive them from the doors of the railway postoffice cars and to load and pile the mails in and unload them from

storage and baggage cars, under the direction of the transfer clerk or clerk in charge of the car if one is on duty."

U. S. Postal Laws & Regulations of 1924, Sec. 1295, par. (2).

Record, p. 14.

3. The regulation just quoted required nothing further of the carrier than that it furnish the men necessary for the purposes indicated and expressly provided that such men, in the performance of that work, should be "under the direction of the transfer clerk or clerk in charge of the car, if one is on duty."

4. The record affirmatively shows that at the time of the injury there were in the mail car both a transfer clerk and a clerk in charge of the car. As to this, there is no controversy.

Record, pp. 40, 137.

5. The injury resulted from the manner in which Hunter, the porter, standing on the mail truck, was placing the sacks of mail into the mail car where they were received and placed by the plaintiff.

Record, pp. 38-39.

6. The porter, Hunter, was, while doing this work, the servant of the federal government and not of the carrier, wherefore the doctrine of lent servant applies.

Record, p. 137.

Y. & M. V. R. Co. v. Denton, 133 So. Rep. 656.

Standard Oil Co. v. Anderson, 212 U. S. 215.

Linstead v. C. & O. R. Co., 276 U. S. 28.

Harrell v. Atlas Co. (C. C. A.), 250 Fed. 83.

Burgess v. Standard Oil Co. (C. C. A.), 262 Fed. 767.

Isaacs v. Prince, 133 Miss. 205.

Carr v. Burke, 131 N. Y. App. Div. 361.

ARGUMENT.

A review of the federal statutes and of the postal regulations makes clear the respective duties of the government and of the carriers in the handling of mails. The carriers' primary duty is that of transportation, including the furnishing of transportation facilities. The government's primary duty is that of handling the mail while it is in the mail car and after transportation is complete. Intermediate between these two primary duties is the matter of loading and the regulation above quoted makes it perfectly clear that there is no duty on the part of the carrier to load the mails into the car, but merely to furnish the men necessary for that purpose.

The practical construction placed by the government and the carriers alike upon these regulations—exhibited in the case at bar—is that the men furnished by the carrier shall be on the outside of the car and hand up the mail sacks to the government clerks who are in the car. As to how this shall be done, men furnished by the carrier are entirely under the direction and control of the government clerk in the car.

This being true and there being no contemplation whatever that the carrier shall superintend and direct the work of the men it is required to furnish, it necessarily follows that the porter in the case at bar was clearly the servant of the government and not of the railroad company during the work of loading. He could have had no instructions from the carrier as to the manner of doing the work *except to obey the directions of the mail clerk.*

And such is the testimony here. The carrier's station master said:

"Q. When he (Hunter) was loading and unloading the mail down there in the car, under whose direction and supervision was he?

A. The transfer clerk and the clerk in the mail car in the United States post office.

Q. Did you leave it to them as mail men to control him and direct him how he should load and unload the mail?

A. Yes, sir.

Q. All the details of that work, the supervision of it, how he did it and what he did, which he loaded first, and how fast he loaded it, did you have any, or did you attempt to exercise any control over that at all?

A. Not a bit in the world. I am busy at other points and I don't stay at one mail car."

Record, p. 27.

Hunter, the porter, testified:

"Q. If you have two or three different kinds of mail on your truck, pouch mail, sacks of mail, boxes, parcel post, and you start to loading one kind, say you start to loading a sack of mail first, and this man tells you to wait, Jim, 'I want you to load that pouch mail first,' do you have to do that?

A. I have to do just what that man tells me to do, the man standing in the car.

Q. Whatever the man in the car tells you to do, what is what you do?

A. Yes, sir.

Q. You do that all the time?

A. Yes, sir.

Q. The man in the car there is your boss so far as loading that mail?

A. As long as I am loading that car, he is my boss." Record, p. 165.

The case of Standard Oil Co. v. Anderson, 212 U. S. 215, is, with the exception of Driscoll v. Towle, 181 Mass. 416, the sole authority relied upon by the petitioner here. In that case the court refused to apply the lent servant doctrine, but the decision rested upon the peculiar facts involved. Plaintiff there was a longshoreman employed by T., a master stevedore, who, under contract with defendant, Standard Oil Co., was engaged in loading a ship with oil. While working in the hold, he was, without fault on his part, struck and injured by a load which was unexpectedly lowered by a winchman. The accident happened because the winchman negligently failed to observe certain signals. The question, therefore, was whether this winchman was, at the immediate moment, a servant of the defendant, the owner of the vessel, or the stevedore who had contracted to load it. It is quite important to note that the work out of which this accident happened *was that of hoisting.* After reciting this situation and reviewing the authorities, the Court said:

"Let the facts in evidence now be considered in the light of the foregoing principles of law. Was the winchman, at the time he negligently failed to observe the signals, engaged in the work of the master stevedore,

under his rightful control, or was he rather engaged in the work of the defendant, under its rightful control? We think that the latter was the true situation. The winchman was, undoubtedly, in the general employ of the defendant, who selected him, paid his wages, and had the right to discharge him for incompetency, misconduct, or any other reaon. In order to relieve the defendant from the results of the legal relation of master and servant it must appear that that relation, for the time, had been suspended, and a new like relation between the winchman and the stevedore had been created. The evidence in this case does not warrant the conclusion that this changed relation had come into existence. For reasons satisfactory to it the defendant preferred to do *the work of hoisting* itself, and received an agreed compensation for it. The power, the winch, the drum, and the winchman were its own. It did not furnish them, but furnished the work they did to the stevedore. That work was done by the defendant, for a price, as its own work, by and through its own instrumentalities and servant, *under its own control.*"

Standard Oil Co. v. Anderson, 212 U. S. 225.

Manifestly that situation is not analogous to that here presented.

In Driscoll v. Towle, 181 Mass. 416, the defendant had agreed with the Electric Light Company to perform certain transportation for the latter by horse and wagon and, to that end, furnished horse, wagon and driver. While hauling material of the Light Company to a destination indicated by it, the driver injured the plaintiff. The Court held the defendant liable, declining to apply the lent ser-

vant doctrine on the ground that while the Light Company had the right to tell the driver what material he should carry and to what destination, the driver remained *"subject to no orders but those of the man who pays him."* The Court added:

> "Of course, in such cases the party who employs the contractor indicates the work to be done and in that sense controls the servant, as he would control the contractor if he were present. But the person who receives such orders is not subject to the general orders of the party who gives them. He does his own business in his own way and the orders which he receives simply point out to him the work which he or his master has undertaken to do."

In other words, the defendant was really an independent contractor with respect to certain services to be rendered the Light Company, the latter having no right of control beyond indicating the service it desired. A different result would have followed if the contract between the defendant and the Light Company had expressly provided that, while driving the wagon, defendant's servant should be under the direction of the representative of the Light Company.

In the case at bar, the obligation of the carrier was merely to furnish men who, as to the manner of doing the work in question, were subject to the orders of the railway mail clerk alone. That clerk was at the scene—no representative of the carrier was present.

The instant case is more like that of Linstead v. C. & O. R. R., 276 U. S. 28. There, Linstead was a conductor in the employ of the "Big Four" Railroad but at the time

of his injury was working on a freight train running on the tracks of the C. & O. R. R. Co. Suit for his death was brought against the latter company and the question in the case was—for whom was he working when killed, the C. & O. or the Big Four? He was a conductor regularly in the employ of the Big Four, but by an arrangement between the Big Four and the C. & O., the Big Four lent to the C. & O. a locomotive, caboose and train crew to take freight trains from Stevens, Ky., to Riverside, Ohio, over the rails of the C. & O., and paid therefor by reciprocal service. When the Big Four train crew ran on the track of the C. & O. they were under the supervision and control of the train master of the C. & O. The Big Four train crew was not subject to discharge by any officer of the C. & O. and were paid by the Big Four. While running as conductor on the track of the C. & O., under the conditions stated, Linstead was killed in a collision between his train and another train of the C. & O. Dealing with these facts, the Court pointed out that the work being done

> "was work done under the rules adopted by the Chesapeake & Ohio Railway Company; and it was done *under the immediate supervision and direction of the trainmaster in charge of the trains running from Stevens to Cincinnati, and that trainmaster was a superior employee of the Chesapeake & Ohio road.* We do not think that the fact that the Big Four road paid the wages of Linstead and his crew, or that they could only be discharged or suspended by the Big Four, prevented their being the servants of the Chesapeake & Ohio Company for the performance of this particular job."

Linstead v. C. & O. Ry., 276 U. S. 34.

This, we say, is a sufficient answer to the argument of petitioner based on the fact that the defendant carriers here employed Hunter, paid him, and alone had the right to discharge him.

The determinative point is that, at the time of the injury, Hunter was working under the direction and control of the Post Office employes who, under post office regulations, had the sole right to direct and control him while loading sacks of mail into postal cars. The evidence shows that in the loading of mail into postal cars, Hunter, as a matter of fact, was directed and controlled solely by these Post Office employes. The carriers maintained no one of their officers at mail cars to supervise and direct the work of Hunter. This was left to the Post Office employes. In other words, not only did the postal regulations require Post Office employes to supervise and direct Hunter and to control him, but this was also the actual practical construction and application of the postal regulations.

Whose was the work here to be performed? It was the handling of mail, the work of the federal government, pursuant to express constitutional authority and to a duty imposed by Congress. The government, through the agency of its Postmaster General, had expressly directed that the duty of the carrier in regard to loading was merely to furnish men to work with and under the supervision of the government clerk in the car—thus, by clear inference, withdrawing such men for the time being from the service and control of their regular master and subjecting them solely to the control and direction of the government clerk in charge of the car.

In Harrell vs. Atlas Cement Co. (C. C. A.), 250 Fed. 83, the railroad company was transporting rock from the cement company's quarry to its plant, and employes of the railroad company who took loaded cars from and emptied cars to the quarry, particularly over the track of the cement company, worked in conjunction with that company's servants in loading and removing the cars. All were under the direction of the cement company. The Court, in an opinion by Judge Sanborn, held that railway employes, though hired and paid by the railroad company, were, in the course of such work, to be regarded as servants of the cement company and fellow servants of the employes of that company. The case of Standard Oil Co. v. Anderson, 212 U. S. 215, was reviewed and the Court pointed out that the holding of that case would not apply for the reason that in the instant case "the cement company had and was exercising the exclusive power to control and direct how, when and where he (plaintiff) should do his work."

Harrell v. Atlas Cement Co., 250 Fed. 83.

Petitioner quotes and relies on two other postal regulations which read:

"Section 1286, Par. 5.—Any person acting for an advantage to himself or another, by authority or consent of the railroad company, and the representing in any manner the interests of the company or railroad in its business transaction with the public, will be regarded as the company's agent or representative.

"Section 1288.—At places where railroad companies are required to take the mails from and deliver them into post offices or postal stations or to transfer them

to connecting railroads the persons employed to perform such service are agents of the companies and not employees of the postal service, and need not be sworn. . . . ''

Even if these provisions would otherwise apply to the situation here involved, it is a sufficient answer to point out the familiar rule that in the construction of these regulations, as in the construction of statutes, a regulation general in character will not prevail over a specific regulation covering the particular matter in question.

> ''The language of the exception is special and express; the words relied on as a repeal are general and inconclusive. The rule is, *Generalia specialibus non derogant.* 'The general principle to be applied,' said Bovill, C. J., in Thorpe v. Adams, L. R., 6 C. P., 135, 'to the construction of Acts of Parliament is that a general Act is not to be construed to repeal a previous particular Act, unless there is some express reference to the previous legislation on the subject, or unless there is a necessary inconsistency in the two Acts standing together.' ''
>
> Ex Parte Crow Dog, 109 U. S. 556.

However, it is quite plain that the two regulations just quoted do not apply and were not intended to apply to the situation here. The carrier is not required to do or even to superintend the work of loading, but merely to furnish men therefor who shall work under the direction of the government clerk.

It cannot be true that the carrier is responsible for the manner in which Hunter did his work of loading when the right to supervise and direct that manner had, by an express regulation of the government, been withdrawn from the carrier and placed in the postal clerk in charge of the car.

We respectfully ask, therefore, that the petition for certiorari be denied.

Respectfully submitted,

H. D. MINOR,
CHARLES N. BURCH,
For Illinois Central Railroad Co. and The Yazoo & Mississippi Valley Railroad Co.

R. V. FLETCHER,
A. S. BOZEMAN,
C. H. McKAY,
Of Counsel.

(All italics ours.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

JESSE H. DENTON,
Petitioner,

vs.

No. 242.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, ET AL.,
Respondents.

BRIEF FOR RESPONDENTS.

H. D. MINOR,
CHARLES N. BURCH,
For Illinois Central Railroad Co. and The Yazoo & Mississippi Valley Railroad Co., Respondents.

R. V. FLETCHER,
A. S. BOZEMAN,
C. H. McKAY,
Of Counsel.

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Respondents.

BRIEF FOR RESPONDENTS.

This is a suit by petitioner Denton against The Yazoo & Mississippi Valley Railroad Company, the Illinois Central Railroad Company and Jim Hunter, a negro porter, to recover damages on the ground that petitioner, a railway mail clerk, was injured through the negligence of Hunter while he and Hunter were jointly engaged in loading sacks of mail on a railway mail car at Jackson, Mississippi—he being in the car and Hunter on the mail truck (p. 38). There was a judgment for petitioner against all three defendants for $12,000. On appeal to the Supreme Court of Mississippi, the judgment was affirmed as to Hunter but

reversed as to the two railroad companies and the suit dismissed as to them. The case is now here by certiorari.

Among other defenses, the railroad companies set up the proposition that, while engaged in the work of loading, Hunter was a servant of the federal government and for his negligence they were not responsible. In other words, the defense was the "lent servant" doctrine—this pursuant to the postal regulation presently to be quoted to the effect that the railroad companies should furnish the men necessary to load the mails into the cars "under the direction of the transfer clerk or clerk in charge of the car." The State Supreme Court sustained this defense and held that Hunter was, *pro hac vice,* the servant of the federal government and not of the carriers (pp. 222-224).

Yazoo etc. R. Co. v. Denton, 133 So. Rep. 656.

BRIEF.

1. "All railway common carriers are hereby required to transport such mail matter as may be offered for transportation by the United States *in the manner, under the conditions, and with the service prescribed by the Postmaster General.*"

   29 Stat. 429, Sec. 5, subd. 27.

   39 U. S. Code Ann., Sec. 541.

2. Pursuant to this authority, the Postmaster General promulgated, among others, this regulation:

> "Railroad companies shall furnish the men necessary to handle the mails, to load them into and receive them from the doors of the railway postoffice cars and to load and pile the mails in and unload them from

storage and baggage cars, under the direction of the transfer clerk or clerk in charge of the car if one is on duty."

U. S. Postal Regulations, Sec. 1293, par. (2).
Record, p. 168.

3. The regulation just quoted required nothing further of the carrier than that it furnish the men necessary for the purposes indicated and expressly provided that such men, in the performance of that work, should be "under the direction of the transfer clerk or clerk in charge of the car, if one is on duty." This placed in the clerk, a representative of the Government, the right and the duty to direct the man furnished by the carrier and, by clear implication, excluded any right in the carrier to direct or control him while in that work.

Infra, pp. 5, 12, 13.

4. The record affirmatively shows that at the time of the injury there were in the mail car both a transfer clerk and a clerk in charge of the car. As to this, there is no controversy.

Record, pp. 40, 137.

5. "Under the direction of the clerk" indicated authority in the clerk, and in him alone, to dictate to the man furnished by the carrier how he should do the work of loading.

Infra, p. 15.

6. The injury resulted from the manner in which Hunter, the porter, standing on the mail truck, was placing the sacks of mail into the mail car where they were received and placed by the plaintiff.

Record, pp. 38-39.

7. The porter, Hunter, was, while doing this work, the servant of the federal government and not of the carrier, wherefore the doctrine of lent servant applies.

Record, pp. 137, 223.
Y. & M. V. R. Co. v. Denton, 133 So. Rep. 656.
Standard Oil Co. v. Anderson, 212 U. S. 215.
Linstead v. C. & O. R. Co., 276 U. S. 28.
Harrell v. Atlas Co. (C. C. A.), 250 Fed. 83.
Burgess v. Standard Oil Co. (C. C. A.), 262 Fed. 767.
Isaacs v. Prince, 133 Miss. 205.
Carr v. Burke, 131 N. Y. App. Div. 361.

ARGUMENT.

The opinion of the State Supreme Court (Rec., pp. 216-224; 133 So. Rep. 656) is forceful and we offer it as a part of our argument.

A review of the federal statutes and of the postal regulations makes clear the respective duties of the government and of the carriers in the handling of mails. The carriers' primary duty is that of transportation, including the furnishing of transportation facilities. The government's primary duty is that of handling the mail while it is in the mail car and after transportation is complete. Intermediate between these primary duties is the matter of loading, and the regulation just quoted makes it clear that there is no duty on the part of the carrier to load the mails into the car, but merely to furnish the men necessary for that purpose, those men to work under the direction of the clerk in charge of the car.

The practical construction placed by the government and the carriers alike upon these regulations—exhibited in the case at bar—is that, in the work of loading mail sacks into the car, the man furnished by the carrier shall be on the outside of the car and hand up the mail sacks to the government clerk who is in the car. As to how this shall be done, the man furnished by the carrier is entirely under the direction and control of that clerk.

This being true and there being no contemplation whatever that the carrier shall superintend or direct the work of the men it is required to furnish, it necessarily follows that the porter in the case at bar was the servant of the

government and not of the railroad company during the work of loading. He could have had no instructions from the carrier as to the manner of doing the work *except to obey the directions of the mail clerk.* And such is the testimony here. The carrier's station master said:

"Q. When he (Hunter) was loading and unloading the mail down there in the car, under whose direction and supervision was he?

A. The transfer clerk and the clerk in the mail car in the United States post office.

Q. Did you leave it to them as mail men to control him and direct him how he should load and unload the mail?

A. Yes, sir.

Q. All the details of that work, the supervision of it, how he did it and what he did, which he loaded first, and how fast he loaded it, did you have any, or did you attempt to exercise any control over that at all?

A. Not a bit in the world. I am busy at other points and I don't stay at one mail car."

Record, p. 27.

Hunter, the porter, testified:

"Q. If you have two or three different kinds of mail on your truck, pouch mail, sacks of mail, boxes, parcel post, and you start to loading one kind, say you start to loading a sack of mail first, and this man tells you to wait, Jim, 'I want you to load that pouch mail first,' do you have to do that?

A. I have to do just what that man tells me to do, the man standing in the car.

Q. Whatever the man in the car tells you to do, that is what you do?

A. Yes, sir.

Q. You do that all the time?

A. Yes, sir.

Q. The man in the car there is your boss so far as loading that mail?

A. As long as I am loading that car, he is my boss."

Record, p. 165.

The case of Standard Oil Co. v. Anderson, 212 U. S. 215, is, with the exception of Driscoll v. Towle, 181 Mass. 416, the sole authority relied upon by the petitioner here. In that case this court refused to apply the lent servant doctrine but the decision rested upon the peculiar facts involved. Plaintiff there was a longshoreman employed by T., a master stevedore, who, under contract with defendant, Standard Oil Co., was engaged in loading a ship with oil. While working in the hold, he was, without fault on his part, struck and injured by a load which was unexpectedly lowered by a winchman. The accident happened because the winchman negligently failed to observe certain signals. The question, therefore, was whether the winchman was, at the immediate moment, a servant of the defendant, the owner of the vessel, or of the stevedore who had contracted to load it. It is quite important to note that the work out of which this accident happened *was that of*

hoisting. After reciting this situation and reviewing the authorities, the Court said:

> "Let the facts in evidence now be considered in the light of the foregoing principles of law. Was the winchman, at the time he negligently failed to observe the signals, engaged in the work of the master stevedore, under his rightful control, or was he rather engaged in the work of the defendant, under its rightful control? We think that the latter was the true situation. The winchman was, undoubtedly, in the general employ of the defendant, who selected him, paid his wages, and had the right to discharge him for incompetency, misconduct, or any other reason. In order to relieve the defendant from the results of the legal relation of master and servant it must appear that that relation, for the time, had been suspended, and a new like relation between the winchman and the stevedore had been created. The evidence in this case does not warrant the conclusion that this changed relation had come into existence. For reasons satisfactory to it the defendant preferred to do *the work of hoisting* itself, and received an agreed compensation for it. The power, the winch, the drum, and the winchman were its own. It did not furnish them, but furnished the work they did to the stevedore. That work was done by the defendant, for a price, as its own work, by and through its own instrumentalities and servant, *under its own control.*"
>
> Standard Oil Co. v. Anderson, 212 U. S. 225.

Manifestly that situation is not analogous to that here presented.

In Driscoll v. Towle, 181 Mass. 416, the defendant had agreed with the Electric Light Company to perform certain transportation for the latter by horse and wagon and, to that end, furnished horse, wagon and driver. While hauling material of the Light Company to a destination indicated by it, the driver injured the plaintiff. The Court held the defendant liable, declining to apply the lent servant doctrine on the ground that while the Light Company had the right to tell the driver what material he should carry and to what destination, the driver remained "*subject to no orders but those of the man who pays him.*" The Court added:

> "Of course, in such cases the party who employs the contractor indicates the work to be done and in that sense controls the servant, as he would control the contractor if he were present. But the person who receives such orders is not subject to the general orders of the party who gives them. He does his own business in his own way and the orders which he receives simply point out to him the work which he or his master has undertaken to do."

In other words, the defendant there was really an independent contractor with respect to certain services to be rendered the Light Company, the latter having no right of control beyond indicating the service it desired. A different result would have followed if the contract between the defendant and the Light Company had expressly provided that, while driving the wagon, defendant's servant should be accompanied by and be under the direction of the representative of the Light Company.

In the case at bar, the obligation of the carrier was merely to furnish men who, as to the manner of doing the work in question, were subject to the orders of the railway mail clerk alone. That clerk was at the scene—no representative of the carrier was present.

The instant case is more like that of Linstead v. C. & O. R. Co., 276 U. S. 28. There, Linstead was a conductor in the employ of the "Big Four" Railroad but at the time of his injury was working on a freight train running on the tracks of the C. & O. Railroad. Suit for his death was brought against the latter company and the question in the case was—for whom was he working when killed, the C. & O. or the Big Four? He was a conductor regularly in the employ of the Big Four but, by an arrangement between the Big Four and the C. & O., the Big Four lent to the C. & O. a locomotive, caboose and train crew to take freight trains from Stevens, Ky., to Riverside, Ohio, over the rails of the C. & O., and paid therefor by reciprocal service. When the Big Four train crew ran on the track of the C. & O. they were under the supervision and control of the train master of the C. & O. The Big Four train crew *were not subject to discharge by any officer of the C. & O. and were paid by the Big Four.* While running as conductor on the track of the C. & O., under the conditions stated, Linstead was killed in a collision between his train and another train of the C. & O. Dealing with these facts, the Court pointed out that the work being done

> "was work done under the rules adopted by the Chesapeake & Ohio Railway Company; and it was done under the immediate supervision and direction of the trainmaster in charge of the trains running from

Stevens to Cincinnati, and that trainmaster was a superior employee of the Chesapeake & Ohio road. *We do not think that the fact that the Big Four road paid the wages of Linstead and his crew, or that they could only be discharged or suspended by the Big Four, prevented their being servants of the Chesapeake & Ohio Company for the performance of this particular job.*"

Linstead v. C. & O. Ry., 276 U. S. 34.

In Harrell vs. Atlas Cement Co. (C. C. A.), 250 Fed. 83, the railroad company was transporting rock from the cement company's quarry to its plant, and employes of the railroad company who took loaded cars from and emptied cars to the quarry, particularly over the track of the cement company, worked in conjunction with that company's servants in loading and removing the cars. All were under the direction of the cement company. The Court, in an opinion by Judge Sanborn, held that railway employes, though hired and paid by the railroad company, were, in the course of such work, to be regarded as servants of the cement company and fellow servants of the employes of that company. The case of Standard Oil Co. v. Anderson, 212 U. S. 215, was reviewed and the Court pointed out that the holding of that case would not apply for the reason that in the instant case "the cement company had and was exercising the exclusive power to control and direct how, when and where he (plaintiff) should do his work."

Harrell v. Atlas Cement Co., 250 Fed. 83.

This, we say, is a sufficient answer to the argument of petitioner based on the fact that the defendant carriers here employed Hunter, paid him, and alone had the right to discharge him.

The determinative point here is that, at the time of the injury, Hunter was working under the direction and control of the Post Office employes who, under Post Office regulations, had the sole right to direct and control him while loading sacks of mail into postal cars. The evidence shows that in the loading of mail into postal cars, Hunter, as a matter of fact, was directed and controlled solely by the Government's representative, the clerk in the car. The carriers maintained no one of their officers or agents at the mail car to supervise and direct the work of Hunter. This was left to the Post Office clerk in the car. In other words, not only did the postal regulations require the clerk to supervise and direct Hunter and to control him, but this was also the actual practical construction and application of the postal regulations.

Whose was the work here to be performed? It was the handling of mail, the work of the federal government—pursuant to express constitutional authority and to a duty imposed by Congress. The government, through the agency of its Postmaster General, had expressly directed that the duty of the carrier in regard to loading was merely to furnish men to work with and under the supervision of the government clerk in the car—thus, by clear inference, withdrawing such men for the time being from the service and control of their regular master and subjecting them solely to the control and direction of the government clerk in charge of the car.

PETITIONER'S PROPOSITIONS REVIEWED.

1. The brief for petitioner, at pp. 7-13, cites sections of the Revised Statutes (U. S. Civ. Code Ann., secs. 531, 533, 538 and 541), which deal with the carrying of mail by rail-

way carriers, and secs. 1286, 1288 and 1293 of the Postal Regulations. From these the argument is made that the whole matter of transportation of mail, including the loading and unloading of mail, is a duty resting solely upon the railway carriers and that every employe taking part therein is the servant of the carrier alone.

The vice of that argument lies in the fact that, with respect to *the loading of mails,* the Postal Regulation (sec. 1293, par. 2), is specific—not that the railway carriers shall load the mails but that they shall merely "furnish the men" necessary to that end. And it is specifically required that, in doing the work of loading, those men shall be under the direction of the clerk in charge of the car. Superintendence or direction by the carrier is excluded —by a clear implication.

The rule is that general regulations must yield to specific provisions. And the practical construction of these regulations indicates clearly the idea that the man supplied by the carrier for work in conjunction with the clerk in the car shall be under his supervision, direction and control and his alone.

> "The language of the exception is special and express; the words relied on as a repeal are general and inconclusive. The rule is *generalia specialibus non derogant.*"
>
> Ex parte Crow Dog, 109 U. S. 556.

2. The argument is made for petitioner that the statute (5 U. S. Civ. Code Ann. 365) requires "all persons employed in the postal service" to take an oath; that Hunter, the porter here, took no oath, wherefore he was no employe of the Post Office Department.

Aside from the fact that the record is silent as to whether Hunter took an oath or not, the proposition advanced can not be sound. This may well be illustrated by the Linstead case, 276 U. S. 28, reviewed supra. Linstead was a conductor and was held to have been a servant of the C. & O. as to the work then being done by him. It is entirely probable that he had never qualified as a conductor under the rules and regulations of that company. If that failure to qualify had appeared in the case, it would have made no difference in the conclusion reached.

The oath is required only of those who are on the Government pay roll. Assuming a state of facts making a clear case for the application of the "lent servant" doctrine in all other respects, it could not be that the doctrine would be refused application merely because the servant in question had not taken the oath.

3. "The loaned servant doctrine can have no application to the case at bar because Jim Hunter, the porter, was the admitted servant of the respondent railroad companies and was doing the very work he was employed by them to do, and for which they were paid by the United States Government. It was the sole duty and obligation of the respondent railroad companies to load and unload United States mail."

Brief for Petitioner, p. 11.

This utterly ignores the plain wording of the regulation in question (sec. 1293, par. 2), which specifically provides that the railroad companies "shall furnish the men necessary to handle the mails, to load them into and receive them from the doors of railway post office cars . . . under

the direction of the transfer clerk or clerk in charge of the car." That provision does not contemplate that the railway carrier shall attend to the loading of the mails or shall supervise or direct that work. Indeed, any right on the part of the carrier to supervise or direct its men in that work is plainly negatived.

4. An argument is made for petitioner that the word "direction" in the phrase occurring in Sec. 1293 of the Postal Regulations (p. 168) to the effect that the carriers must furnish men necessary to "load and pile the mails in and unload them from storage and baggage cars, under the direction of the transfer clerk or clerk in charge of the car if one is on duty," means merely the right to "point out" or "indicate" the work to be done. The case of Hinds v. Kellogg is cited. That case involved a construction of a New York statute providing that the referee's report shall "direct the judgment to be entered thereupon." The Court said:

> "This does not comprehend an instruction or command to a person whose duty it is to enter judgment to perform that duty. The word 'direct,' as used in this connection, is synonymous with the words 'to point out,' 'to guide,' 'to show,' 'to regulate.'"
> Hinds v. Kellogg, 13 N. Y. Supp. 923.

That case, manifestly, involved no question of the control or direction of a man doing work for another. A more pertinent ruling is that of the Illinois Court to the effect that "one of the accepted meanings of the word 'direction' is 'the act of governing, ordering or ruling.'"
Kellyville Coal Co. v. Bruzas, 223 Ill. 600.

This Court has had occasion to consider the meaning of the word "direction" in dealing with the requirement of the statute that the Commissioner of the General Land Office is to "perform under the direction of the Secretary of the Interior all duties appertaining to the surveying and sale of the public lands," etc. The Court said:

> "The phrase 'under the direction of the Secretary of the Interior,' thus used in these statutes, as was said by Mr. Justice Lamar, speaking for this court, 'is not meaningless, but was intended as an expression in general terms of the power of the Secretary to supervise and control the extensive operations of the Land Department, of which he is the head."
> Warner Stock Co. v. Smith, 165 U. S. 34.

The word "direction" as used in the phrase "under the direction of the . . . clerk in charge of the car" is synonymous with "orders" or "control." A single car was in contemplation and the work being done was that of transferring the mails from a small truck to the mail car. There was but one opening—a narrow one—in the door of the car for that purpose (p. 139). It follows that there was no respect in which the porter could be directed by the mail clerk except as to the manner of handing up the bags. There was no room for direction as to where the porter should go, what packages of mail he should get for handling or in what car or in what door of the car he should place them. The regulation contemplated, necessarily, that the process of loading would involve the placing of the sacks in the car by the porter for further handling by the clerk. Nothing was left, therefore, for the clerk to do in the way of direction except to dictate the

manner in which the sacks of mail should be handed in. That was his right and duty *and his alone.*

It cannot be true that the carrier is responsible for the manner in which Hunter did his work of loading when the right to supervise and direct that manner had, by an express regulation of the government, been withdrawn from the carrier and placed in the postal clerk in charge of the car.

We respectfully ask, therefore, that the judgment of the court *a quo* be affirmed.

Respectfully submitted,

H. D. MINOR,
CHARLES N. BURCH,
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(All italics are ours.)

SUPREME COURT OF THE UNITED STATES.

No. 242.—October Term, 1931.

Jesse H. Denton, Petitioner,
vs.
Yazoo & Mississippi Valley Railroad Company, The Illinois Central Railroad Company, et al.

On Writ of Certiorari to the Supreme Court of the State of Mississippi.

[January 4, 1932.]

Mr. Justice Sutherland delivered the opinion of the Court.

The petitioner, a United States railway postal clerk, sustained an injury due to the alleged negligence of one Hunter, a porter in the general service of the two railroad companies named as respondents. Hunter was hired and paid by the Illinois Central Railroad Company. At the time of the injury he was engaged in loading United States mail into a mail car, under the direction of a United States postal transfer clerk, and was not, as to that work, under the direction or control of either of the railroad companies.

The mail was being transported by the railroad companies under c. 261, § 5, 39 Stat. 412, 429, U. S. C., Title 39, § 541, which requires all railway common carriers to transport such mail "in the manner, under the conditions, and with the service prescribed by the Postmaster General". A regulation of the Postmaster General, adopted by authority of this statute, provides:

"Section 1293. . . . 2. Railroad companies shall furnish the men necessary to handle the mails, to load them into and receive them from the doors of railway post office cars, and to load and pile the mails in and unload them from storage and baggage cars, under the direction of the transfer clerk, or clerk in charge of the car, if one is on duty, except as provided in Section 1290. Mails intended for delivery to postal clerk shall never be placed in a postal car unless there is a clerk on duty to receive and care for them."

Petitioner brought an action in a Mississippi state court of first instance, against the railroad companies and Hunter, to recover

damages for the injury, joining the railroads upon the theory that, in performing the work of loading the mail, Hunter was their servant. A verdict against all of the defendants was returned by the jury, and a judgment thereon entered. The judgment, as to the railroad companies, was reversed by the state supreme court on the ground that what Hunter was doing at the time of his alleged negligent act, was not for them but for the United States. — Miss. —.

Whether the railroad companies may be held liable for Hunter's act depends not upon the fact that he was their servant generally, but upon whether the work which he was doing at the time was their work or that of another, a question determined, usually at least, by ascertaining under whose authority and command the work was being done. When one person puts his servant at the disposal and under the control of another for the performance of a particular service for the latter, the servant, in respect of his acts in that service, is to be dealt with as the servant of the latter and not of the former. This rule is elementary and finds support in a large number of decisions, a few only of which need be cited. In *Standard Oil Co.* v. *Anderson*, 212 U. S. 215, 220-225, this court said:

"The servant himself is, of course, liable for the consequences of his own carelessness. But when, as is so frequently the case, an attempt is made to impose upon the master the liability for those consequences, it sometimes becomes necessary to inquire who was the master at the very time of the negligent act or omission. One may be in the general service of another, and, nevertheless, with respect to particular work, may be transferred, with his own consent or acquiescence, to the service of a third person, so that he becomes the servant of that person with all the legal consequences of the new relation.

"To determine whether a given case falls within the one class or the other we must inquire whose is the work being performed, a question which is usually answered by ascertaining who has the power to control and direct the servants in the performance of their work. Here we must carefully distinguish between authoritative direction and control, and mere suggestion as to details or the necessary coöperation, where the work furnished is part of a larger undertaking.

"In many of the cases the power of substitution or discharge, the payment of wages and other circumstances bearing upon the

relation are dwelt upon. They, however, are not the ultimate facts, but only those more or less useful in determining whose is the work and whose is the power of control."

And see *Linstead* v. *Ches. & Ohio Ry.*, 276 U. S. 28; *Harrell* v. *Atlas Portland Cement Co.*, 250 Fed. 83, 85; *Brady* v. *Chicago & G. W. Ry. Co.*, 114 Fed. 100, 107; *Wyllie, et al* v. *Palmer, et al*, 137 N. Y. 248, 257; *Higgins* v. *Western Union Telegraph Co.*, 156 N. Y. 75, 78; *Cotter* v. *Lindgren*, 106 Cal. 602, 607; *Rourke* v. *White Moss Colliery Co.*, L. R., 2 C. P. Div. (1876-1877) 205.

The statutory obligation imposed upon the railroad carriers is simply to transport mail offered for transportation by the United States. They are not required to handle, load or receive mail matter, but only to furnish the men necessary for those purposes. The men so furnished handle the mails and load them into, and receive them from, the railway post office cars, as the regulation prescribes, "under the direction of the transfer clerk, or clerk in charge of the car." The work they do is that of the government. It is said that "direction" means nothing more than the right to point out or indicate to the men furnished the disposition to be made of the mail. The scope of the word, as it is here used, is not to be thus limited. The phrase, "under the direction of the transfer clerk," would be practically meaningless unless it comprehended the power to supervise and control the movement. Obviously, as the evidence shows, a direction by the transfer clerk carries with it the duty, on the part of the men directed, to obey, and has, and was intended to have, the force of a command. See *Warner Valley Stock Company* v. *Smith*, 165 U. S. 28, 34; *Kellyville Coal Co.* v. *Bruzas*, 223 Ill. 595, 600.

The *Anderson* case, *supra*, and *Driscoll* v. *Towle*, 181 Mass. 416, are relied upon by petitioner to sustain the verdict of the jury. In the *Anderson* case, a winchman in the general service of the Standard Oil Company was furnished by the company to a master stevedore under contract with it to load a ship with oil. The winchman, in operating the winch, depended upon signals to be given by an employee of the stevedore to determine the proper time for hoisting and lowering the cargo. The negligence charged was that a draft of cases had been lowered before receiving the signal. This court held upon the facts, in the light of the rule which we have just stated and discussed, that the power, the winch, and the winch-

man were those of the company, and that the company did not furnish *them,* but furnished the *work they did* to the stevedore; and that this work was done by the company as its own work, by its own instrumentalities and servant under its control. A judgment for Anderson against the company was affirmed.

In the *Driscoll* case the defendant was engaged in a general teaming business. Plaintiff was struck and injured by a horse or wagon driven by a servant of the defendant. This driver, for some time, had been carrying property for an electric light company under some arrangement between that company and the defendant. He was told by an employee of the company, from time to time, what to do and where to go, and was sometimes directed to drive fast, in which event he did so. He selected his own route and had exclusive management of his horse. At the time of the accident he was going to get some supplies in pursuance of an order from the foreman of the company. It was held that there was evidence to go to the jury that the driver was the servant of the defendant. The court said that it fairly could be found that the contract between defendant and the company was an ordinary one by the defendant to do his regular business by his servants in the common way; that in such cases the one who employs the contractor controls the servant only in the sense that he indicates the work to be done; but that the person who receives such orders is not subject to the general orders of the one who gives them. "He does his own business in his own way, and the orders which he receives simply point out to him the work which he or his master has undertaken to do."

In each of these cases the facts plainly demonstrated that the work was that of the general master, and that in doing it, the servant had not passed under the direction and control of the person for whom the immediate work was being done, the latter being looked to not for commands, but for information. As already shown, the facts of the present case require a different conclusion.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.